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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 LEE E. BUCHWALD, as Chapter 7
4 Trustee for Magnesium
5 Corporation of America and
6 Related Debtor, Renco Metals,
7 Inc.,

8 Plaintiff,

9 v.

13 CV 7948 (AJN)
Trial

10 THE RENCO GROUP, INC., a
11 Delaware corporation, et al.,

12 Defendants.

13 New York, N.Y.
14 February 24, 2015
15 9:40 a.m.

16 Before:

17 HON. ALISON J. NATHAN,

District Judge

18 APPEARANCES

19 BEUS GILBERT, PLLC
20 Attorneys for Plaintiff
21 BY: LEO R. BEUS
22 SCOT C. STIRLING
23 ROBERT STIRLING
24 MALCOLM LOEB

25 KAYE SCHOLER LLP
Attorneys for Defendants
BY: H. PETER HAVELES, JR.
JEFFREY A. FUISZ
-and-
PARK JENSEN BENNETT LLP
BY: TAI H. PARK
STEVEN C. BENNETT

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(Trial resumed; jury not present)

THE COURT: Good morning, everyone.

I sent what I believe is the final version of the draft charge and special verdict form after inputting the changes from the conference yesterday. I circulated that to you last night just to see if there were any final technical edits or any problems as a result of my incorporation of those changes.

Mr. Haveles.

MR. HAVELES: Yes, your Honor. With respect to charge 19 on punitive damages, what happened was -- I will hand up a black-line in a second -- is that 90 percent of the Delaware charge was added but all of the New York language changed in the punitive damages charge. If I may, I will hand up a black-line that reflects that.

THE COURT: Yes. Yes. I see it.

MR. HAVELES: What I have handed up to Mr. Stewart and he has handed up to your Honor, is we have shown the text of the last two sentences of the Delaware pattern instruction that didn't make it, and then we have stricken the New York charge that stayed within the punitive damages section. That's the only thing that we saw in reviewing the verdict form and the charges, your Honor.

THE COURT: Okay. Mr. Stirling.

MR. STIRLING: I'm trying to follow exactly what is

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1 the error, the part that you think should now be out.

2 MR. HAVELES: Based on our discussion yesterday, the
3 New York patent instruction was going to be deleted and the
4 Delaware patent instruction, as modified by the Court, was
5 going to be inserted. None of the New York instruction was
6 deleted, so we have the two combined together. We have
7 stricken through what was the New York patent instruction that
8 was to be deleted on the bottom of page 1, what would be
9 line 23 and then extras, the last two sentences of the Delaware
10 pattern charge that was inadvertently omitted from the
11 inclusion. Everything thereafter is the New York charge that
12 should have been stricken.

13 THE COURT: Looking at what I have circulated last
14 night on page 28, it would cut lines 24 through all of page 29,
15 and that would eliminate the New York charge, which was meant
16 to be eliminated. And then you're saying, Mr. Haveles, the
17 last two sentences of what you handed up on your page 28 are
18 part of the model charge that I didn't include.

19 MR. HAVELES: Yes, that was the last two sentences in
20 the sixth paragraph of the pattern Delaware instruction that we
21 gave to your Honor yesterday. I have an extra copy of that to
22 hand up to you and Mr. Stewart if you would like to see it.

23 THE COURT: I will take it again.

24 MR. HAVELES: Your Honor, the paragraph that begins,
25 "In determining any award."

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1 THE COURT: Yes.

2 MR. HAVELES: It is the last two sentences in that
3 paragraph that was inadvertently omitted.

4 THE COURT: All right.

5 MR. STIRLING: Understood. I concur.

6 THE COURT: Thank you.

7 MR. HAVELES: We have nothing else, your Honor.

8 THE COURT: Thank you for that.

9 Just to be clear, we're cutting, beginning on page 28,
10 line 24, through all of 29, and then we're adding the following
11 sentences to the end of the paragraph that now is on page 28,
12 line 23, last word "deterrence" and then a new sentence, "Any
13 award of punitive damages must bear a reasonable relationship
14 to plaintiff's compensatory damages. If you find that
15 plaintiff is entitled to an award of punitive damages, state
16 the amount of punitive damages separately on the verdict form."

17 Mr. Stirling, anything else --

18 MR. STIRLING: No, your Honor.

19 THE COURT: -- from yesterday?

20 MR. STIRLING: Nothing, your Honor.

21 THE COURT: Thank you very much. Thank you for that
22 catch.

23 With that, we will clean up the cover sheet of this
24 just to say jury charge and today's date, and we will clean up
25 the cover of the verdict form and say special verdict form and

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1 today's date, which is February 24th, and then we'll get copies
2 of those printed during the day today.

3 Other matters to take up?

4 MR. HAVELES: Just the agenda items we talked about in
5 terms of exhibits once the jury comes in.

6 Do you want to do the court exhibits in their presence
7 or before they come in?

8 THE COURT: Court exhibits, we won't do in their
9 presence. I will take up getting final word on the exhibit
10 list. I just did want to hear, to make sure we get it done
11 before the jury, are there any other matters in anticipation of
12 summations? I know what came in last night, there were some
13 exhibits that had not been recirculated. I gather those are
14 not going to be used.

15 MR. HAVELES: We have spent several hours last night,
16 Mr. Fuisz, with email exchanges with Mr. Beus' colleagues. We
17 have worked out whatever is going to be used by Mr. Beus in the
18 slides, and your Honor issued an order sustaining objections to
19 two. All the remaining slides we have reached a resolution as
20 to what is to be used.

21 THE COURT: Okay.

22 MR. PARK: Your Honor, I just want to get one point of
23 clarification. There is just going to be one video clip from
24 Mr. Adams' testimony that I'm going to play. I did not provide
25 a screen shot of that to plaintiff's counsel. I just wanted to

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1 be sure that because that is in evidence that is not considered
2 kind of a demonstrative that I needed to share with them. I
3 can tell them which clipping it is. It is just where Mr. Adams
4 says that what the Chinese did was not foreseen. It is just
5 that part of his videotape that came into evidence; five
6 seconds, ten seconds of that videotape.

7 MR. STIRLING: Your Honor, the videotape is not
8 evidence. There was testimony that the jury saw, and they can
9 cite to the transcript or from the court exhibit, the
10 transcript that was played to them, but we understood your rule
11 that we are not allowed to show a still picture from a
12 deposition. That video should not be replayed.

13 MR. PARK: That's fine, Judge. I thought it was in
14 evidence, but that's fine.

15 THE COURT: The testimony is technically in evidence,
16 just like the testimony of people who were here live is in
17 evidence. I think it is unrelated to the issue of the still
18 photo, but just read from the testimony, as you would any other
19 testimony.

20 MR. PARK: Very well, your Honor.

21 MR. STIRLING: Related to that, we would like to know
22 before the commencement of the arguments, what is the Court's
23 protocol for objections if we perceive something objectionable
24 is being stated during arguments? In my experience, there's a
25 lot of different approaches as to how that should be addressed,

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1 and we would like to know your preference for how to make a
2 record of our objection in a timely way so that it can be
3 addressed, if necessary, immediately or at the conclusion of
4 the argument.

5 THE COURT: Obviously, there should be some amount of
6 restraint, but if you have an objection, you should make it
7 contemporaneously.

8 MR. STIRLING: Very well.

9 Finally, your Honor, with respect to the discussion we
10 had yesterday about Court exhibits, I think there was a little
11 ambiguity or uncertainty about where we were with respect to
12 the agreed facts. I understood that those were going to be
13 marked as a Court exhibit. After an exchange with Ms. Nunez, I
14 believe she was under the impression that we should mark that
15 as one of the plaintiff's exhibits.

16 THE COURT: I didn't think it should be marked as a
17 Court exhibit. If I said that, I made a mistake. I think you
18 want that to go back to the jury.

19 MR. HAVELES: I think our agreement was on the record
20 yesterday it would be the next in line of plaintiff's numbers
21 to go in as a plaintiff's exhibit.

22 THE COURT: If for some reason you don't want to call
23 it the plaintiff's exhibit, I'm happy to call it a court
24 exhibit but send it back.

25 MR. STIRLING: That's fine. We brought it over in

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1 both forms, unmarked and marked, as our next Exhibit 2792.

2 They were exchanged last night. We had some discussion about
3 it. I will offer that when the jury is here as Exhibit 2792.

4 THE COURT: Okay. 2792, that's going to be offered.

5 MR. HAVELES: We have 8129 that will be offered before
6 the jury, your Honor.

7 THE COURT: Was there anything else?

8 MR. HAVELES: 8129 is the only one that we will offer,
9 your Honor.

10 THE COURT: Okay. My deputy gave you a list of all
11 exhibits admitted into evidence. It is marked at the top as of
12 the end of day -- it says, end of day, 2/24/15. There are
13 additional ones.

14 MR. HAVELES: Ms. Nunez has included 8129, so I think
15 it is intended to reflect the two documents that are going to
16 be offered.

17 THE COURT: Does it include 2792?

18 MR. HAVELES: Yes, it does. We talked about it with
19 Ms. Nunez so she would have it on a list for your Honor.

20 THE COURT: I understand you have been shown the
21 three-page list, it says as of end of day 2/24/15, which I
22 understand to be the complete list, including the last two we
23 just discussed of all exhibits. Is that correct?

24 MR. HAVELES: Yes, your Honor. From defendant's
25 perspective, the list is accurate.

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1 THE COURT: Mr. Stirling?

2 MR. STIRLING: Yes, your Honor.

3 THE COURT: Let me ask you: I am fine with the list
4 itself going back to the jury, if you would like, as a kind of
5 cover to the exhibits.

6 MR. HAVELES: I have no objection.

7 MR. STIRLING: That would be fine, your Honor.

8 THE COURT: Okay. Let me just get from my deputy what
9 court exhibit I'm marking this list as.

10 THE DEPUTY CLERK: Number 9.

11 THE COURT: The list that we just discussed that
12 everybody has agreed is the full list that says as of end of
13 day, 2/24/15, final, I am going to mark as Court Exhibit 9; but
14 on everyone's agreement, we will provide a copy of it on top of
15 the exhibits that are going back with the jury so that they
16 have the full list of admitted exhibits.

17 MR. HAVELES: Thank you, your Honor.

18 THE COURT: And then let me also get final
19 confirmation that you have both looked at the actual physical
20 set of exhibits that are going to go back with the jury to the
21 jury room and make sure that it is complete and acceptable.

22 MR. HAVELES: From defendants' perspective, we believe
23 the documents collected are consistent with the list that we
24 have marked as Court Exhibit 9, your Honor.

25 MR. STIRLING: Yes, your Honor.

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1 THE COURT: What else do we need to take up?

2 MR. HAVELES: The court exhibits we need to mark are
3 for the designations from the Adams and Bowen video deposition.
4 I believe we reserved Court Exhibit 6 and 7 for those, your
5 Honor. We're going to mark them A and B, one for each side's
6 designations therefrom.

7 THE COURT: You want to hand those up?

8 MR. HAVELES: Yes, your Honor. I'm going to hand to
9 Ms. Nunez the Adams designation, the Bowen designation so they
10 can be marked 6B and 7A, respectively. I will hand a copy to
11 Mr. Stirling.

12 THE COURT: Thank you.

13 Mr. Stirling, if you're in agreement, we will mark the
14 designations of Mr. Adams -- is it Mr. Adams' that is 6A and 6B
15 and Ms. Bowen 7A and 7B?

16 MR. HAVELES: Yes, with the proponent of the witness
17 being A and the counter designation being B, your Honor.

18 THE COURT: Acceptable, Mr. Stirling.

19 MR. STIRLING: Yes, your Honor. I have 6A our
20 designations from Mr. Adams, and 7B our designations for
21 Ms. Bowen.

22 THE COURT: Okay.

23 MR. HAVELES: Your Honor, for the record, each side
24 exchanged these last night to review to make sure that we were
25 in accord that they were the correct designations.

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1 THE COURT: Great. Thank you. Those will be marked
2 as the indicated court exhibits.

3 Anything else?

4 MR. HAVELES: Your Honor, I believe that's it on my
5 list.

6 THE COURT: Who will be doing the closing?

7 MR. PARK: I will.

8 MR. BEUS: I will.

9 MR. HAVELES: I get the day off, your Honor.

10 THE COURT: All right. And so are you set up,
11 Mr. Park?

12 MR. PARK: Yes, I am, your Honor.

13 MR. BEUS: I gave him a little space.

14 THE COURT: I appreciate that, Mr. Beus.

15 Anything else from the plaintiff's perspective?

16 MR. BEUS: If we were to object, can we just stand and
17 not say anything and have you notice us? If it is outside the
18 record, just say record?

19 THE COURT: Why don't you stand and say objection so
20 that's on the record, but no grounds are necessary unless I
21 ask. Thank you.

22 All right. We will take a few minutes until we get
23 our full set of jurors. Let's assume a five-minute break.
24 Thank you.

25 (Recess)

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1 THE COURT: We do have all of our jurors. There is
2 one who is not feeling so well but indicated he is okay to
3 continue. Barring any developments there, we are ready to
4 proceed.

5 (Continued on next page)

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1 THE COURT: Is that poster board for your opening,
2 Mr. Park?

3 MR. PARK: Yes, your Honor.

4 (Jury present)

5 THE COURT: Everyone may be seated.

6 Members of the jury, good morning. Thank you very
7 much for your attention and diligence and for taking an extra
8 day off yesterday so that we could finish the work we needed to
9 do to get ready for today.

10 In just a few moments we will begin the summation
11 arguments of counsel. This will be an opportunity for the
12 lawyers to summarize all of the evidence that has come in
13 during the course of the trial and put it together for you in a
14 way as they argue how the evidence supports the outcome that
15 they seek in the case. And we will hear first the closing
16 argument on behalf of the defendants, which Mr. Park will make,
17 and then we will end with the closing argument on behalf of the
18 plaintiff, which will be made by Mr. Beus.

19 Before that, we have a few housekeeping matters to
20 take care of.

21 Mr. Haveles.

22 MR. HAVELES: Your Honor, we offer Defendants' Exhibit
23 8129 into evidence.

24 THE COURT: Without objection from Mr. Stirling.

25 MR. S. STIRLING: No objection.

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1 THE COURT: 8129 is admitted.

2 (Defendant's Exhibit 8129 received in evidence)

3 THE COURT: Mr. Stirling.

4 MR. S. STIRLING: Your Honor, we offer Exhibit 2792.

5 MR. HAVELES: No objection, your Honor.

6 THE COURT: 2792 is admitted.

7 (Plaintiff's Exhibit 2792 received in evidence)

8 With that, Mr. Park, you may take the podium.

9 MR. PARK: Thank you, your Honor.

10 Good morning, ladies and gentlemen. One of the nice
11 things about being able to go first is that I get to be the
12 first to tell you how grateful all the lawyers in this
13 courtroom are for all of the attention and the patience that
14 you have shown throughout this trial. It really has been
15 extraordinary. There has been extraordinarily complex terms
16 thrown around, coming very fast, very furious and the rapt
17 attention that you have listened to that evidence has been
18 exceptional and we are all very, very grateful.

19 Ladies and gentlemen, your particular focus was
20 particularly important in this case because of the
21 extraordinary demand that the plaintiff is making in this case.
22 Let's make no mistake about what it is that they are asking
23 from you.

24 Lee Buchwald wants an owner of a company, an owner
25 that owned 100 percent of that company, to return all of the

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Summation - Mr. Park

1 earnings that it received in the form of dividends 20 years
2 ago. Lee Buchwald wants the managers of MagCorp, the
3 executives who worked so hard during the 1990s to assist the
4 company in becoming successful, he wants them to return their
5 money 20 years later. We are talking about Mike Legge, Ron
6 Thayer, Lee Brown, Howard Kaplan, Todd Ogaard.

7 From his very opening statement Mr. Beus told you that
8 the plaintiff has this storyline of recklessness and greed,
9 managers and owners were driving a company, MagCorp, into
10 bankruptcy. I submit to you that the evidence in this case has
11 shown no such thing.

12 Plaintiff's claims are that the dividends that were
13 received from December 1995 to October 1998 were fraudulent
14 conveyances in a sense that those dividends and the payments to
15 the managers left the company insolvent, that it couldn't pay
16 its bills, that it had inadequate capital, that its assets were
17 below its liabilities after those dividends. That is the issue
18 in this case. That is the sole issue in this case. It is the
19 issue upon which all of their claims, whether it's fraudulent
20 conveyance, fraudulent transfer, violations of fiduciary duty,
21 unjust enrichment, they rely heavily on the plaintiff's ability
22 to prove insolvency during those three years.

23 Bankruptcy in this case was filed six years after the
24 first dividend. Bankruptcy was filed three years after the
25 last dividend. Mr. Beus says that they want hundreds of

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Summation - Mr. Park

1 millions of dollars. He said that in his opening statement.

2 If this plaintiff succeeds in forcing the owner and
3 the MagCorp managers to return this money, do you know who gets
4 it? Let's go over the evidence that came into this case.

5 Ira Rennert told you who they are, the bondholders who
6 have filed claims in this case are the ones who are poised to
7 receive any funds that are returned in this case. They are not
8 the original bondholders. Ira Rennert told you they are
9 vulture funds. What does that mean?

10 MR. S. STIRLING: Objection.

11 THE COURT: Overruled.

12 MR. PARK: What does that mean? When Mr. Buchwald,
13 the trustee, first took the stand, he described, on my
14 examination, the fact that there are opportunistic investors.
15 These are bondholders or these are investors, hedge funds, like
16 AIG or Carlyle, who buy bonds at fire sale after the company
17 has filed for bankruptcy. Ira Rennert told you they buy it at
18 2 cents on the dollar. It's a fire sale.

19 Why are they doing that? This company is in
20 bankruptcy. Because of the opportunity. What is the
21 opportunity? The opportunity is if they convince you to force
22 the owner and the MagCorp managers to return money earned 20
23 years ago, these investors earn 98 cents more on the dollar
24 than they paid for those bonds. It is called a windfall.
25 That's what we are dealing with. The trustee, the plaintiff,

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Summation - Mr. Park

1 Buchwald told you there are other claimants. There are trades,
2 there are businesses. He also told you they comprise about \$5
3 million of the claims. The bondholders comprise \$169 million
4 of claims in this case. So ask yourself where is this money
5 going to go if it is taken from the owner and MagCorp managers?
6 You know the answer. That is some opportunity.

7 Now, what's in it for Mr. Buchwald, the trustee, the
8 plaintiff in this case? He told you that himself. He gets a
9 cut of whatever the size of the recovery in this case is. The
10 larger the recovery, the bigger his payout.

11 In order for this to happen the plaintiff has to prove
12 his case because it is an extraordinary demand. What he has to
13 show is that of the 12 years that the Renco Group owned
14 MagCorp, from 1989 to when bankruptcy was filed in 2001, during
15 that 12-year time period there were three years in which Renco
16 Group, the owner, took dividends. What they have to prove is
17 that during those three years the company was rendered
18 insolvent. That is the focus of this case.

19 To support this extraordinary demand you think the
20 plaintiff would walk in here with hard, compelling evidence
21 that proved to you and left you with an understanding that,
22 yes, the company was left insolvent as a result of these
23 dividends, evidence that you can hold onto.

24 But, instead, the plaintiff walked in here with an
25 incredibly complex story about environmental issues that dated

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Summation - Mr. Park

1 all the way back to the '80s, an incredibly complex story about
2 technological progression in the electrolytic cells at the
3 MagCorp facility that went on and on about ALCAN cells and
4 sealed cells, an incredibly complex story about the magnesium
5 global market and the vicissitudes over the 1990s and 2000s.
6 He put up document after document dating from the 2000 time
7 period, not December 1995 to October 1998, but from December --
8 I'm sorry, from 2000 and beyond. There is a reason why he did
9 that. Because he doesn't want you, I submit to you, he doesn't
10 want you to focus on that period. That is your chief
11 attention.

12 Let's put up Defense Exhibit 9010A. This is an
13 exhibit that came into evidence. The reason why he cannot have
14 you focus on this period is because the financial data speaks
15 for itself. As of October 1995, they have \$23.9 million
16 sitting in a bank account just collecting interest. Why? They
17 had already paid all the costs. That's what they have left
18 over. In October 1995, they have got \$18.40 million in a
19 credit line that they never tap because they don't have to
20 because they pay all their bills with cash. And they are still
21 left with \$23 million. In 1996, \$17.2 million left in cash,
22 \$22 million of credit available. 1997, \$23 million in cash;
23 1998, \$19.6 million. Even in 1999, when things start to
24 tighten, they are doing fine, \$5 million in cash and their
25 credit keeps going up. During those three years that is the

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Summation - Mr. Park

1 focus of your attention. There is no dispute that MagCorp
2 comprised 21 percent of the magnesium sales market in North
3 America.

4 Every witness who was asked this question of you at
5 trial told you that before the bond offering that you heard so
6 much about, the bond offering that happened in 1996, before
7 that, they were each totally comfortable with the financial
8 strength of the company. Who are they? Let's start with Ira
9 Rennert, Mike Legge, Roger Fay, CFO of Renco Group; Todd
10 Ogaard, CFO of MagCorp, chief financial officers. They were
11 intimately familiar with the financial records and performance
12 of MagCorp throughout the '90s. Todd Ogaard created the
13 documents that sit here now before you. These are the
14 financial filings and the financial statements year after year,
15 month after month of MagCorp. These gentlemen had no concerns
16 about the financial strength, nor should they, did they have
17 any reason to be concerned.

18 It wasn't only the financial statements that they were
19 working on that gave them this comfort. During the bond
20 offering you heard about three professional independent firms
21 that gave these men, who are defendants in this case, whose
22 money the plaintiff wants, three independent firms who got
23 involved intimately with the bond offering.

24 Who are they? DLJ, Donald Lufkin Jenrette, an
25 investment banking firm on Wall Street that's now a part of

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Summation - Mr. Park

1 Credit Suisse. KPMG, one of the big four remaining accounting
2 firms globally. Congress Financial, now a part of Wells Fargo,
3 MagCorp's lending bank. We will get to in greater detail what
4 role these major institutions played, but you will remember
5 their names coming up. They were very much involved in the
6 bond offering. You learned how much each of these entities had
7 access to the financial data of MagCorp prior to the bond
8 offering becoming effective. KPMG is a regular outside
9 auditor, gets access to their financial records for purposes of
10 auditing those records. Congress Financial is their regular
11 lending bank. They are the ones who extended that credit that
12 you see in the blue bars year after year after year. Is there
13 any question about their comfort level regarding the financial
14 strength of MagCorp?

15 But there was a fourth independent firm that
16 specifically focused on analyzing MagCorp's solvency. That
17 firm was called Houlihan Lokey. And you will recall Ms. Bowen,
18 Marjorie Bowen, who testified by video, who talked about the
19 extensive work that she did, completely focused on the single
20 question, as of 1996, prior to the bond offering, is MagCorp
21 solvent? Is Renco Metals solvent? You know what her
22 conclusion was. She told you her job was not to just see if
23 MagCorp is okay during the good days. She used the term doom
24 and gloom. Her job was to stress test this company and its
25 numbers and see whether they can survive a downturn, the bad

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Summation - Mr. Park

1 days.

2 And based on the information then available to
3 everyone in 1996, because that's the time period you have to
4 put yourself in, not today, but in 1996, during that time
5 period, with the information available, she would stress test
6 MagCorp's financials. They concluded solvency, totally
7 solvent.

8 She also told you it's not just her. Houlihan Lokey
9 is a valuation firm, well-known one. She had the highest
10 members of management of Houlihan Lokey review her conclusions,
11 peer review, to ensure that the firm itself would stand behind
12 this conclusion. That's what she told you.

13 Besides all of these professionals, who else had to be
14 very comfortable with MagCorp's financial condition? The
15 bondholders. Institutional investors who bought MagCorp's
16 bonds invested \$150 million, gave \$150 million to MagCorp or
17 Renco Metals, confident that they would get their money back,
18 they would get a stream of income of 11.5 percent interest
19 every year.

20 Who were these bondholders? Are we talking mom and
21 pop down the road? No. We are talking about players, the most
22 sophisticated institutional investors that you can imagine.
23 You heard about Fidelity. You think they don't know what they
24 are doing when they put their money in an investment? Harvard
25 Investments is another bondholder that you heard about from Ira

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Summation - Mr. Park

1 Rennert, Players. Let's put them up here. Call them
2 institutional investors.

3 As if that weren't enough, he had another professional
4 come in front of you and talk to you about his stress testing,
5 his solvency analysis. That was Roger Grabowski of Duff &
6 Phelps. He was defendants' expert. He was the last one you
7 heard from, a person who literally wrote a book on business
8 valuation. He told you, with all the information currently
9 available to him, but putting himself in the seat of 1996
10 through 1998, he concluded solvency.

11 Now, plaintiff tells you, put all of that aside.
12 MagCorp was insolvent. What's the proof they have of that?
13 Who tells you that? A lone voice, Jason Frank, that's their
14 expert. You remember the young man that came up here. He
15 spoke for about 30 minutes on direct examination, showed you
16 not a single document, not a single calculation. Talked a mile
17 a minute and told you MagCorp was insolvent, Jason Frank.
18 That's their solvency case.

19 According to the plaintiff, everyone else on this page
20 were wrong to believe in the financial strength of MagCorp in
21 the 1990s. I'll have a lot to say about Mr. Frank during my
22 summation. But this much is clear right now. If you are left
23 with a contest between Mr. Frank and Marjorie Bowen and her
24 peer review at Houlihan Lokey, and Roger Grabowski and his peer
25 review at Duff & Phelps, the comfort and the financial strength

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Summation - Mr. Park

1 of this company during the 1990s at all of these institutions
2 and the managers of MagCorp drew from those numbers, among
3 others, if that's the contest, it's not a contest.

4 I submit to you they have flatly failed to sustain
5 their burden of proof in this case and that's the key. They
6 have the burden. We don't have to prove solvency. They have
7 to prove insolvency. You realize how deeply inadequate
8 Mr. Frank's testimony is when you consider this and you
9 consider their burden. Especially when you consider that for
10 his conclusions Mr. Frank just assumed that MagCorp was sitting
11 on a huge environmental contingent liability, and I want to
12 move to that now.

13 Liability that would drag down those numbers into the
14 red. What's the bottom line here, ladies and gentlemen? We
15 heard so much about dioxins and furans and HCBs, again and
16 again and again.

17 What's the bottom line? The bottom line is we are
18 sitting here in 2012. There has been zero finding of liability
19 for environmental violations. It is a wall that stands before
20 the plaintiff and his experts and they want you to ignore that
21 wall. You cannot ignore that wall because contingent liability
22 asks you to do the following. If you are sitting in 1996, you
23 are sitting in 1998, you sit there and you go, what are the
24 chances I am going to be found liable for environmental cleanup
25 costs or fines of any materiality to me. That's the question.

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Summation - Mr. Park

1 You have to do that probability analysis. The judge will tell
2 you that.

3 Astonishingly, not a single one of the plaintiff's
4 experts, not a single one of their witnesses offered you any
5 clue about how you to do a probability analysis. They said,
6 assume 100 percent liability. Are you serious? You walked in
7 here in 2012, 20 years later, with no liability finding, and
8 you think you can just start talking about dioxins and furans
9 and cause the jury to just say, well, I guess this is a
10 problem. I guess that was a sesspool so there must be a
11 contingent liability that makes these numbers irrelevant.
12 That's their suggestion to you, ladies and gentlemen. It
13 should be rejected because you have to do the probability
14 analysis. That is the law.

15 Was there a probability in 1996 that the company was
16 in violation of environmental laws and regulations? The
17 evidence has shown you that the answer to that is no. Was
18 MagCorp, during that time period, looking at such huge
19 environmental liability concerns that would sink the company.
20 The answer to that, the evidence has shown, is no.

21 Let's just assume for a moment, let's humor the
22 plaintiff and say, you know what, there is a hundred percent
23 liability. That's just assume that. Notwithstanding the fact
24 that nothing has ever been in terms of liability, let's assume
25 for that exercise. What is the fine? What is the cleanup

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Summation - Mr. Park

1 costs that MagCorp would have faced in 1996 through 1998?

2 What's the evidence? Not conjecture, not fantastical numbers,
3 but the evidence.

4 You heard from defense witnesses Dr. Powell, who
5 talked about cleanup costs, and Steven Johnson, the former unit
6 chief at EPA region 9, who told you about the fines and the
7 cleanup costs, pragmatic, fair. Though they told you it's 10
8 to \$14 million, all in, fines and cleanup. That's what MagCorp
9 would really have been looking at.

10 And when you look at these numbers, ladies and
11 gentlemen, listen. \$14 million is a lot of money. But MagCorp
12 could have paid that with a credit card in a single quarter, it
13 would not impact of any materiality on MagCorp's solvency.
14 That's what the evidence in this case has shown. Strip away
15 all of the smoke screens and all of the confusion and that's
16 what we are left with. If there is a finding of liability, if
17 it is a hundred percent certain, \$14 million tops, top range,
18 top range, is what you'd be looking at.

19 Let's talk about technology. Plaintiff came in here
20 and relentlessly talked about the ALCAN cell. It was a
21 failure, wasn't it. ALCAN was a failure. Again and again. I
22 am going to spend some time on that. But I leave you with this
23 now. The M-cell that was developed by Ron Thayer and his group
24 of engineers at MagCorp, Ira Rennert told you this and it was
25 uncontroverted. The M-cell is best in class. In terms of

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Summation - Mr. Park

1 electrolytic cells that make magnesium, best in class. That
2 was developed in the 1998, tested throughout the 1998, '99 time
3 period, put into production as of May 2001.

4 So you have the evidence that shows you a company that
5 is relentlessly driving toward technological improvements,
6 spending millions of dollars, not just on the ALCAN cells and
7 the M-cells, the electrolytic cells, but all the other
8 technologies that go into making a competitive company. And
9 they focus in on this ALCAN cell, call it a failure and say,
10 therefore, therefore what? Therefore, this company was doomed
11 to fail. Said that over and over again. Where is the
12 evidence? Where is the evidence of that?

13 Let's go to the production slide. Let's talk about
14 the evidence. This is a document. It's a slide that takes its
15 numbers from the exhibits that are in evidence in the lower
16 left-hand corner. These bar charts tell you how much magnesium
17 MagCorp was producing during the time period in question. You
18 see that yellow area. That's the period of the transfer dates,
19 the period that is your focus, transfers of dividends. They
20 are flat out making as much magnesium as the plant is capable
21 of handling, more than 43,000 tons of magnesium. That's tons
22 of magnesium every year.

23 What are they doing that with? Broken down, doomed to
24 fail technology? You see it curving down in 2001 to only
25 21,000 tons and we will get to that. The reason why is because

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Summation - Mr. Park

1 they shut down because there were no sales to be made. We will
2 get to that.

3 If you focus in the yellow period, the three-year
4 period, that is proof of a company that is robust, that is
5 going flat out for the next generation, because that was being
6 produced by their IG Farben cells and their sealed cells. But
7 for their next generation cells, during that time period, it is
8 an unrelenting continued progressive search for betterment,
9 more efficiency, more chlorine capture. And we will go through
10 that to some extent, because there has been so much confusion
11 created about it.

12 But that is evidence that stands before you and tells
13 you that this company was not in any kind of threat whatsoever
14 from its technological status. The technology issue is noise.
15 It's static. It takes you away from the financial question
16 during that yellow period.

17 Let's talk about the market. The plaintiff spent days
18 trying to convince you of market factors that cast doubt on
19 solvency. But the evidence in this case shows you that during
20 the 1990s the market was not only strong for MagCorp, it was
21 trending upward. It started to slow in 1999 and then fell off
22 the cliff by 2001.

23 During the three years of the transfers, the outlook
24 for MagCorp was excellent. Was competition something that
25 MagCorp had to watch out for? Of course. Of course. Were the

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Summation - Mr. Park

1 Chinese and their constant efforts to get into the U.S. and
2 North American markets something that had to be watched out
3 for? Absolutely. The record in this case is abundantly clear
4 that Howard Kaplan, the head of sales and marketing, did
5 exactly that. Watched the Chinese, watched the Russians,
6 watched the Ukrainians, watched the Canadians. That vigilance
7 and prudence is all that is shown in this evidence at trial.

8 What the plaintiff wants to do with that is to say
9 they were seeing the Chinese and the Chinese ended up coming in
10 2000, and 2001, and, therefore, they must have known that in
11 this time period there was insolvency. It doesn't work that
12 way. We will talk about why the Chinese, during the entire
13 '90s, were not a threat to MagCorp, that focused on the North
14 American market, focused on alloy and not the powder. We will
15 talk about why the Chinese, notwithstanding its continued
16 encouragement, did something extraordinary in 2000, that even
17 the plaintiff's own expert witness told you was unforeseen.

18 The plaintiff can parade up all of these horrors,
19 but not a single one of them is supported by the evidence.

20 I am going to come back to all of these theories. But
21 let me say this. When you line up the real evidence, the
22 witnesses who walked in here and gave you their best testimony
23 of what was going on in the 1990s, plaintiff's theories, every
24 single one of them evaporate. There is nothing left. It's
25 fumes.

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Summation - Mr. Park

1 Every document, when put into context, not when lifted
2 out in specific passages, not when taken in snippets, but when
3 considered as a whole from that time period, either they
4 undermined the plaintiff's theory or saying nothing in support
5 of it. I submit to you that at the end of the day what the
6 plaintiff is really hoping is this. They will never say it to
7 you because it's not permitted. But what they are really
8 hoping for is that you will conclude that because the company
9 filed for bankruptcy in 2001, it must have been insolvent
10 during that time period. That is their secret hope and you are
11 not to do that.

12 Why? The judge will tell you that you can't conclude
13 because something bad happened today necessarily that it
14 existed back in the time period for your consideration. And
15 your common sense and everyday experience tell you the same
16 thing. Sometimes life throws a curveball and knocks you flat
17 on the ground. Just get up and move forward. You don't say,
18 maybe I shouldn't have been up here today walking forward. You
19 don't do that. Life throws some curveballs. Just keep going.

20 It's easy for guys like the plaintiff involved with
21 your funds to swoop in after the fact with 20/20 hindsight and
22 second-guess the company management's decision, second-guess
23 Mike Legge and say he had a conflict of interest because he had
24 an incentive program. It's easy for them to come in and say
25 stuff like that.

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Summation - Mr. Park

1 But second guessing has no place in this courtroom,
2 especially when you consider this. The Federal Reserve Bank
3 website shows you what the gross domestic product, or GDP, of
4 the U.S. Government was and the U.S. economy was historically.
5 They keep a website. And we introduced into evidence Defense
6 Exhibit 9024. And based on that exhibit we created a chart.

7 What you see is a GDP U.S. economy growth from 1995 to
8 1996. It grows to 3.8 percent. From '96 it goes to '97,
9 growth. '97 to '98, flat. '98 to '99, more growth. What
10 happens now? '99 to 2001. What happens from 2000 to 2001?
11 That is the GDP. That is the U.S. economy. That's called
12 recession. It's undisputed.

13 Mike Legge and all the other witnesses who talked
14 about a recession, they weren't making it up. There is no
15 mystery about what happened when the recession took over the
16 economy during this time period. And at the very same time,
17 it's not just a recession. I want to be very clear on this.
18 At the very same time the Chinese came in, in 2000 and 2001,
19 and dumped humongous volumes of powder magnesium into this
20 particular market, the very market that magnesium relies on,
21 not Europe, not China, not the east; the United States and
22 North America. That was U.S. Magnesium's market -- I'm sorry,
23 that was MagCorp's market.

24 And in that market the Chinese came in, and it's not
25 that they just came in, ladies and gentlemen. It's very

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Summation - Mr. Park

1 important to keep in mind, they lowered their price from \$1.19
2 per pound to \$.89 per pound. That's call illegal dumping.
3 It's against the law and that's what they did.

4 What happened as a result? Demand dries up. You
5 can't sell this stuff and you are in for a tough haul.

6 The plaintiff ignores what happened to the economy.
7 You never heard it from them. They won't acknowledge it. Just
8 like they won't acknowledge the fact that 20 years after 1995,
9 we still don't have any inkling of any environmental liability.
10 They won't confront that either. They won't confront this.

11 Just like that they ignore that the M-cell is best in
12 class today. Just don't confront it. They tell you instead,
13 focus on dioxins, furans, HCBs, PCBs.

14 As counsel relentlessly harped on witnesses'
15 inconsistencies between their testimony up there and their
16 deposition testimony, I want to talk about that.

17 Ira Rennert spent hours on the stand, getting flogged,
18 frankly, for how terribly how he did at his deposition, where
19 he was totally not prepared and did not prepare himself.

20 What does that have to do with your mission, whether
21 the company was solvent December 1995 to October 1998? What
22 does that have to do with anything? On that issue you need
23 help from an expert, a solvency expert? They put Mr. Frank up
24 there for 30 minutes on direct examination. But they will
25 spend hours embarrassing Ira Rennert for his horrendous

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Summation - Mr. Park

1 deposition performance.

2 This is their case. This is their approach. They
3 show you a big picture of the house, a huge house. Do you
4 remember, during the opening statement they said, this is Ira
5 Rennert's house. Did you ever see that house again? Did that
6 house picture get into evidence? You didn't. You know why?
7 Because there is zero evidence in this case connecting that
8 house to the dividends at issue here. Why was that house
9 brought into this? Why was it shown to you? You know why.
10 Because it takes your eye off that ball, gets you angry, right,
11 just like dioxins and furans, it gets you really angry. But
12 anger has no place in this courtroom. Let's focus on the
13 evidence.

14 One thing is clear. Given your obvious focus
15 throughout this trial, you are not a jury that's going to
16 ignore the evidence. You are not a jury that's going to be
17 sidetracked by pictures of big houses and consistent reminders
18 about furans and dioxins. You are going to look at the
19 evidence. Some of you have been taking more notes that are
20 probably better than the transcripts that these court reporters
21 have been taking. We are very appreciative of that. So let's
22 talk about the evidence.

23 Here is how I am going to proceed, ladies and
24 gentlemen. I am going to talk at some length about solvency.
25 Then I am going to talk about why MagCorp, what the evidence

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Summation - Mr. Park

1 shows as to why MagCorp was so successful during that time
2 period and why they were brought to their knees during the
3 latter time period. Then we are going to talk about each of
4 the plaintiffs, what I call distractions, take the eye off the
5 ball matters. And we will talk about the claims in this case.

6 Let's start with the core issue. Was MagCorp
7 insolvent in December 1995 to October 1998 when its owner,
8 Renco, took dividends. Let me be a little more precise because
9 this is important. For the dividends that were paid out in
10 December 1995 and 1996, the plaintiff has to prove that the
11 company was insolvent during that time period. In other words,
12 you take each dividend and the financial condition of the
13 company at the point of that dividend separate from the other
14 time periods of the dividends. When you get a verdict sheet
15 you will see that the dates of the dividends are broken out
16 separately because you must reach a judgment about the solvency
17 condition and the plaintiff's failure to prove that solvency
18 during each of those periods.

19 If it's insolvent in 1998, it has nothing to do
20 with 1996. Same for 1996 versus 1998. That is how focused
21 your job has to be. This is not easy. You don't throw stuff
22 up against the wall and say, well, I guess they were all
23 insolvent during that entire time period. It doesn't work that
24 way.

25 Let's look at those years. What's the evidence that

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Summation - Mr. Park

1 during any of those years, those three years, MagCorp failed
2 the solvency test, that it, number one, couldn't pay its bills
3 or that, number two, its liabilities were greater than its
4 assets, or, number three, that it had an inadequate amount of
5 capital to continue to operate.

6 The Renco Group owned MagCorp from 1989 to 2001, 12
7 years. During the 12 years there are only three periods of
8 dividends because during the other time periods there were no
9 dividends taken. How is the company doing during that entire
10 time period in the '90s? Let's go to the sales slides. From
11 these financial records that sit before you that are in
12 evidence, we took the data that gives you the numbers we are
13 about to go through in these slides. There is no dispute about
14 these numbers.

15 What you see is that in 1995, they made \$136 million
16 in revenue. During the yellow time period they are above \$140
17 million every year. It starts to dip in 2001 and you see the
18 green part. That's when things were so bad, they shut down the
19 cells because they had too much inventory. There was no point
20 in making magnesium because they couldn't sell it. So they
21 sold some of the energy back. That's what the green comprises.
22 \$81 million was their low point of sales in 2001.

23 Let's go to the EBITDA slides. Again, EBITDA,
24 earnings before interest tax, depreciation and amortization.
25 You heard about that. Basically, income. During the time

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Summation - Mr. Park

1 period, the three-year time period, EBITDA is very strong, \$54
2 million, \$40 million, \$39 million. Waste basket in 2001.
3 That's how bad things got.

4 You remember all the back and forth that Mr. Beus did
5 with Ira Rennert about these EBITDA slides and whether it was
6 before the dividends, after the dividends. There was a big
7 fight over that. You know what, who cares.

8 Take that down. Let's go to the next slide. Let's go
9 to the cash and cash equivalent slide.

10 This slide tells you what was left after everything
11 was paid, the dividends were paid, the interest on the bonds
12 were paid, all the costs, operating costs, capital expenditure
13 costs, everything is paid. This is the cash that remains.

14 Let's go to credit available slides. Credit is
15 available from Congress Financial to MagCorp during that time
16 period and you see it going up every year. By 1999, their
17 credit was close to \$30 million. They never drew on this
18 credit. What does that say to you about a company's ability to
19 pay its bills, that they wouldn't need to even draw on a line
20 of credit that is so readily available to them?

21 In fact, let's go to the income slides. The money
22 that MagCorp had available in excess cash was so great that you
23 heard Todd Ogaard, the CFO of MagCorp, tell you that he was
24 able to go to their bank, Congress Financial, and negotiate a
25 very sweet rate of return on interest. In 1995, they made

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Summation - Mr. Park

1 close to \$600,000 in cash just from their banks. Their banks
2 were paying them. In 1996, the green is Congress Financial.
3 The others are other financial institutions. They are making
4 over a million dollars. In 1997, close to a million dollars,
5 just income from these financial institutions, paying MagCorp.
6 Same thing in 1998.

7 Let's go to the total liquidities slide that you saw
8 before. This is the final metric, cash available, credit
9 available. When asking yourselves whether assets exceed
10 liability, all you need is a dollar more than liability to be
11 solvent. They weren't just squeaking by with solvency.

12 In terms of valuation analysis, Roger Grabowski told
13 you what the assets versus liability picture really looks like.
14 Let's take a look at the solvency cushion slide. Based on
15 information and the exhibits that came in through Mr.
16 Grabowski, in 1996, at the time of the bond offering, you are
17 seeing an enterprise bond value of \$310 million. Debt and
18 contingent liabilities that he estimated based on the inputs
19 that he was given of 161. Solvency cushion, cushion, just a
20 cushion for solvency, \$149 million.

21 So if we can take a minute to just think about what
22 these documents show and what it is that the plaintiff has in
23 opposition to these documents, let's go to the cash needs
24 document, Plaintiff's Exhibit 2786. This is a document that
25 Mr. Beus showed Roger Grabowski. This is a slide that

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Summation - Mr. Park

1 plaintiffs created.

2 We will bring up the right one. Cash and cash
3 equivalents. I want to present this to you and walk through
4 this thing with you because it's very important because in many
5 ways on a single sheet of paper this tells you what the
6 plaintiff's approach to this case is. It's a totally
7 misleading slide on a number of different levels, and I want to
8 go through why.

9 First of all, they say that it's MagCorp 1995 to 1998.
10 Actually, that's not -- it looks like four years. It's
11 actually not. It's actually December 1995 to October 1998,
12 which is a little less than three years.

13 But, more importantly, what you have in the right
14 column is, they added during that time period, that three-year
15 time period, all the cash and cash equivalents and came to 83.6
16 million. That's fine. But on the left-hand column what they
17 do is, they create a bar that looks like that the cash needs
18 during that time period would absolutely overwhelm the cash
19 that's available to MagCorp during that time period, and it's
20 utterly misleading.

21 Let's start with the very top bar there, note payoff
22 of \$150 million. That belongs nowhere on this chart. Why is
23 that? Because the note payoff, the bonds, the 1996 bonds, they
24 are not due to be paid until 2003. That's like saying you've
25 got a mortgage of \$100,000 on your house that's due five years

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Summation - Mr. Park

1 from now and you've only got \$10,000 in your bank account today
2 and they said, well, you must be broke because you have a cash
3 need now of \$100,000. That's obviously a fallacy, that they
4 put it up there. It doesn't belong on that chart.

5 Let's go to the technology down below where it says
6 \$58 million. That's CapEx technology costs. They put that in
7 the chart. That's wrong, too. Because the cash and cash
8 equivalents is net of all CapEx costs and expenses. That green
9 is what you have after all the CapEx expenses have been paid
10 during that time period. Maybe what they have in mind is that
11 the \$58 million isn't technology CapEx from the '95, '98 time
12 period, but rather it is for future periods and they call that
13 a cash need in this time period. But that's wrong, too.
14 Because if you want to put that \$58 million of cash for CapEx
15 costs for the future, you should show the \$100 million of
16 revenue that's coming in in the future and you make that \$58
17 million just go away because it doesn't belong on this chart,
18 and they have remediation costs of \$157 million.

19 Now, that's from Tom Tripp's memo that he did in 2001,
20 after MagCorp filed a lawsuit. Tom Tripp told you he did a
21 back of the envelope, hasty, here are some estimates, assuming
22 a vindictive EPA and assuming we lose the entire case. That's
23 what he told you. The case hasn't been lost anywhere close,
24 vindictive EPA hasn't been shown.

25 Their own expert, Mr. Allen, has a high of \$77

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Summation - Mr. Park

1 million. But does that stop them from putting \$157 million up
2 there just to jack up that bar? Of course it doesn't stop
3 them. That should be removed. It doesn't belong there. It's
4 got no relevance to this case. We can talk about that,
5 Mr. Allen's \$77 million, which is 100 percent liability, when
6 you know after 20 years there has been no liability. At a
7 minimum, if you do a contingent liability probability analysis
8 you are going to cut that by 50 percent because if you're
9 sitting at '96, what do you think that the probabilities are
10 that there is going to be any liability.

11 When you do all of this, tops, \$10 million, maybe of
12 remediation costs. That's what remains. And you are left with
13 \$83 million in cash. That means you're \$73 million on top.

14 (Continued on next page)

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Summation - Mr. Park

1 MR. PARK: This chart is useful in a number of ways.
2 Number one, it is useful because it shows you what their
3 approach is and how misleading it can be. Number two, it shows
4 you that if you actually apply the right numbers and even
5 assuming this bar graph is remotely accurate, you apply the
6 right metrics, you end up with solvency, their own graph.

7 Let's now talk about why -- if we can put up 9010A --
8 why during the time period at issue MagCorp's numbers are so
9 good, why they're so strong. Howard Kaplan did projections
10 year after year. He would project what are we going to sell
11 next year, what are we going to sell two years from now, three
12 years from now. If you look at forecast, the actual slide
13 8916, actual year to date, plan year to date, the variance --
14 variance means, if it is positive, that means they did better
15 than projections for sales, they did better for operating
16 income. In fact, if anything, the projections were always
17 slightly conservative because they always ended up doing
18 slightly better than Howard Kaplan projected. It bespeaks a
19 level of diligence and accuracy. I say I'm going to do it, I
20 not only do it, but I do it a little bit better than what I say
21 I'm going to do.

22 That's a bar graph depiction of the table that you
23 just saw, where the black is the actual and the forecast is
24 gray. It gives you a picture. If you go back to 9010A, I want
25 to suggest this to you: If you're looking at that graph and

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Summation - Mr. Park

1 you're thinking, that looks like solvency to me, that's what
2 your common sense tells you, it looks like solvency to me, you
3 should trust your judgment because it is reliable.

4 There is a lot of testimony in this case about
5 business valuation principles. It is not easy stuff. But
6 remember what Marjorie Bowen told you -- she was from Houlihan
7 Lokey -- she agrees with your take on these numbers. Your
8 reactions to these numbers are sound. The numbers show
9 solvency. Her much more elaborate analysis comes to the same
10 conclusion.

11 Let's go to DX 8225. Let's go to the first page so we
12 can get oriented. This is Marjorie Bowen, Houlihan Lokey's
13 solvency opinion report dated up there in July of 1996. If you
14 go to page 4, going to the next page, as well, on a pro forma
15 basis, the fair value and present fair salable value of the
16 company's assets would exceed the company's stated liabilities
17 and identified contingent liabilities. Test number one. Test
18 number two, the company should be able to pay its debts as they
19 become absolute and mature. Test number three, the capital
20 remaining in the company after the transaction -- which means
21 the bond offering and the dividends -- would not be
22 unreasonably small for the business in which the company is
23 engaged, as management has indicated it has now conducted and
24 is proposed to be conducted following the consummation of the
25 transaction. Those formal tests are all satisfied after her

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Summation - Mr. Park

1 analysis.

2 Why was this period so strong for MagCorp? Remember
3 what Ira Rennert said? He referred to this as the miracle
4 metal. This is magnesium. Super strong, super light.
5 Essential for aluminum. Essential for titanium. It is made
6 from the salt water brine of the Great Salt Lake. Virtually, a
7 limitless supply. Its primary first source of energy is the
8 sun that evaporates and separates most of the water from the
9 brine, leaving the materials ready for chemical processing. It
10 is in abundant supply. It has a market that is never going to
11 stop. This is what Ira Rennert saw. This is why during the
12 1990s its progression and strength was so great.

13 Mike Legge also told you that at MagCorp they made an
14 unusually pure quality of the magnesium that had it stand out
15 from its competitors.

16 Congress Financial, which was involved in the initial
17 purchase with Mr. Rennert and Renco Group, they did their own
18 environmental analysis. They had an evaluation done to ensure
19 that there were no serious problems here. This was a valuable
20 investment. All Ira Rennert saw was upside. He also saw
21 management; mike Legge, Ron Thayer, Howard Kaplan, Lee Brown.
22 You didn't hear much about Lee Brown, but Lee Brown was head of
23 government relations for the company, by the way, also named as
24 a defendant, virtually never mentioned in this case, just put
25 his name up as a defendant, don't even bother to put any proof

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Summation - Mr. Park

1 against him, but Lee Brown was important to defending the
2 company's competitive landscape. He brought anti-dumping and
3 enforcement efforts, he spearheaded them during the early 1990s
4 to prevent the Canadians and Russians at that time and, to some
5 extent, the Chinese from coming in. He found these people who
6 had been with the Rowley plant for many, many years. They were
7 all, for the most part, engineers. Conservative,
8 straightforward, hard working, knew this side inside out.
9 Fundamentals of a strong company.

10 Howard Kaplan got his Ph.D from University of
11 Pennsylvania, ivy league education, also an extraordinary
12 salesman, an engineer in metallurgical engineering. Ira
13 Rennert found quality, and these men worked hard throughout the
14 time period in question to make this company successful.

15 Todd Ogaard was the youngest member. He came from
16 KPMG in 1993 and later became the CFO in 1994. You saw him
17 testify. Mild, calm, cautious, very careful person. Very
18 straightforward and very much expert in financial data.

19 This was the workings of MagCorp. These are the men
20 that Ira Rennert left in charge. But he didn't just leave them
21 in charge. You learned that he went there every month for two
22 days a month. Renco Group, during that time period, had a
23 number of other companies that it owned. Renco Group, as you
24 can imagine, had investments that it had to take care of. But
25 Ira Rennert would take that plane to Utah every month, the

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Summation - Mr. Park

1 entire 12 years, spend two days out there, one day walking the
2 plant. Why? Ask yourselves why.

3 They have created this picture of a man who just wants
4 his money and is going to cut out and take off. That's the
5 picture they have of him. But the evidence has actually
6 shown -- you can totally disregard his testimony, I don't care
7 whether you take his testimony or not -- you heard it from all
8 the other witnesses, and in fact there is no dispute he went
9 out there every month, that he walked the plant. Why was he
10 doing that?

11 Why not take conference calls? Just have a phone
12 call. How you guys doing? I'm getting your financial reports.
13 Let me fire off some questions. Get them answered. Move on.

14 Why is he going out there walking the plant every
15 month? And why does Renco Group, after they buy MagCorp,
16 institute a profit-sharing plan for the first time in that
17 plant, where the union guys, the staff people, they all share
18 ten percent of the profits of the company?

19 Now, the plaintiff made this big deal about the fact
20 that there is this NWAPA agreement. This NWAPA agreement, net
21 worth appreciation participation agreement. In 1992, Renco
22 Group said to the key managers of MagCorp -- in 1992, four
23 years before the dividends at issue -- said I want you guys to
24 be part of this agreement.

25 What is that agreement? It says, guys, stay here

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Summation - Mr. Park

1 long, work hard, if the company succeeds, you succeed. That's
2 called an incentive, performance incentive plan. That's all it
3 is. And somehow they have converted even that to a conflict,
4 as if this were a tool for creating a conflict of interest so
5 that those managers would not do their jobs in protecting
6 MagCorp's interests. It is a false and baseless picture.

7 Ask yourselves: Did they ever show any evidence of
8 any kind that any of these men violated their duties to the
9 company? Did they ever shirk their duties in trying to enable
10 this company to be as successful as it could be?

11 Ira Rennert told you that his goal when he bought this
12 plant was make it the biggest, the best, the most efficient
13 producer of magnesium in the world. He's that kind of guy. He
14 is going to make it the biggest and the best.

15 What does the evidence show? Let's go to the
16 production panel. I'm sorry. Let's go to the capex panel,
17 DX 9018. In case you're thinking, well, Ira Rennert is sitting
18 up there, so he'll say whatever he is going to say, let's just
19 go to the proof. Let's not rely on people's testimony years
20 later, let's rely on what was getting created back in the
21 period that you have to keep your eyes on. This shows the
22 capital expenditures from 1991 to 2001. Put your money where
23 your mouth is. You see continued expenses being paid from the
24 company's cash flow, getting plowed right back into the
25 engineering and physical improvements. From 1996 to 2001, the

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Summation - Mr. Park

1 expenses just ramp up. Renco took its \$75 million in dividends
2 in 1996 with the bond offering. So what does this picture have
3 to do with a greedy owner who is going to cut and run? Why is
4 he saying, yeah, put in \$10 million for capital expenditures
5 rather than giving it to me?

6 It is not just capital expenditures, ladies and
7 gentlemen. It is research and development. What does that
8 mean? It means the scientists and engineers are spending that
9 kind of money, \$2 million in 1997, another \$2 million in 1998,
10 just to research new technological improvements. Why is that
11 happening? It is happening because Ira is going to make this
12 company the biggest and the best. There is no other
13 explanation. That's proof. Not a single dividend in the early
14 years, 1989 to 1996. The first one is December '95.

15 What are they spending their money on? Mike Legge and
16 Ron Thayer told you. They went on and on about the different
17 projects; to cut down chlorine emissions, to increase
18 productivity, less energy, more production. So they talked
19 about the chlorine reduction burner, the spray dryer, the
20 high-energy scrubber, the iron stripper, countless
21 modifications to the electrolytic cells, including the sealed
22 cells that had been in existence, the I.G. Farben cells, the
23 Alcan cells, the M-cells. This is a company, a management, and
24 an owner committed to creating a foundation for something that
25 will last.

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Summation - Mr. Park

1 If you're going to walk in here and say Ira Rennert,
2 Mike Legge, and Ron Thayer weren't in it for the long haul, for
3 MagCorp, have an explanation, please. Give us an explanation
4 for why they are committing these kinds of resources again and
5 again. Don't settle for conjecture, ladies and gentlemen.
6 Demand evidence.

7 Plaintiff spent so much time on electrolytic cells. I
8 want to spend a minute to sort out what that's about.

9 THE COURT: Before you do, Mr. Park, we're going to
10 take our mid-morning break.

11 Members of the jury, we're going to take about a
12 10-minute break. Enjoy your break.

13 (Continued on next page)
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Summation - Mr. Park

1 (In open court; jury not present)

2 THE COURT: All right. Anybody need me? Ready to
3 take a break?

4 MR. BEUS: I do have one item.

5 THE COURT: Go ahead.

6 MR. BEUS: When there are repeated references to
7 somebody is only on the stand for 30 minutes, at some point in
8 time, they need to be told we were on a clock, with that kind
9 of argument. It is just only fair.

10 THE COURT: I think that's right. I will let the jury
11 know that I did have everyone on a clock. The problem with it
12 is it then just opens up to arguments about how long you spent
13 on certain things and others, but I do think that the
14 references to the time require some note that all the lawyers
15 had a clock for the amount of time they could present evidence,
16 it was the same amount of time for both sides. Okay?

17 MR. BEUS: Thank you.

18 THE COURT: Mr. Park?

19 MR. PARK: That's fine.

20 THE COURT: I will do it when they come back.

21 MR. BEUS: You may tell them, in the closing, we have
22 clocks, so they know we are going to end sometime. Just
23 kidding.

24 THE COURT: You're kidding?

25 MR. BEUS: I actually think it is a good idea so they

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Summation - Mr. Park

1 know the circumstances under which we're operating.

2 MR. PARK: I don't think that is necessary.

3 THE COURT: You only have a clock insofar as I gave
4 you the time that you asked for.

5 MR. BEUS: We didn't dare ask for more.

6 THE COURT: I actually assumed you asked for more than
7 you thought I would give you on the assumption I would cut
8 that.

9 MR. BEUS: We actually thought you would cut it back.

10 THE COURT: I thought about it, but given the time
11 constraints, though I think the way trial occurred only
12 confirmed my belief that the amount of time was appropriate,
13 but given that you felt crunched, I wanted to give you the time
14 you needed in the closing. I gave you more than you needed
15 because you asked for it.

16 MR. BEUS: I could make another request to have a
17 little extra time, if I could, your Honor.

18 THE COURT: I can't tell if you're joking.

19 MR. BEUS: I'm half joking and half serious.

20 THE COURT: I won't change the rules. I gave you
21 exactly what you asked for, and it is the case that sometimes
22 less is more.

23 MR. BEUS: Your Honor, in that regard, you've
24 conditioned us such that we have to be very reasonable in our
25 requests.

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Summation - Mr. Park

1 THE COURT: Then, my job is done here.

2 MR. BEUS: I know.

3 THE COURT: No, I assumed you asked for more than you
4 thought I would give you, but I gave it to you. One, it was
5 what you asked for; and two, that both sides had had an
6 understanding of what the ground rules would be.

7 So we will take a break. When they come back, I will
8 make the point about that there was reference to the amount of
9 time with certain witnesses and the like. I do want the jury
10 to know that both sides had a certain amount of time in total
11 to present evidence; and that it was the same amount of time
12 for both sides, and what they did with that time was their
13 choosing. And I will, I think, just give them a sense that --
14 just to give the sense of the day -- we may or may not get
15 through -- well, how much time do you anticipate, Mr. Park?

16 MR. PARK: I was going to take the full two and a half
17 hours, Judge. I have been told I have an hour and 15 minutes
18 left. I'm glad Mr. Stewart confirmed that.

19 THE COURT: I will tell them that we may or may not
20 get through the closings today, I may or may not instruct them
21 on the law today, but certainly by sometime tomorrow morning we
22 will be finished with the closings and the instructions and
23 they will head into their deliberations.

24 Mr. Park, you have to speak into the mike. Your voice
25 sometimes comes almost to a whisper.

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Summation - Mr. Park

1 MR. PARK: I apologize.

2 THE COURT: I'm watching the court reporters. They're
3 getting you. I think at some point there is some struggle
4 among the jurors to hear what you're saying.

5 MR. PARK: I saw that, too. I will keep it up.

6 THE COURT: Just the mike in front of you, especially
7 if you're turning to face the board or the projector. And if
8 you're doing that sort of quieter delivery, do it more loudly.

9 MR. PARK: Okay.

10 THE COURT: See you shortly.

11 (Recess)

12 (Continued on next page)

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Summation - Mr. Park

1 (In open court; jury present)

2 THE COURT: Thank you, members of the jury.

3 Just a few quick notes about the clock: One, there
4 was reference to the amount of time spent on certain witnesses
5 or evidence and the like. I do want you to know that both
6 sides were on a clock for the trial, and that is to say they
7 had a certain number of hours total that they could use. It
8 was the same amount of time for both sides, and what they did
9 with their time was up to them. I did want you to know that
10 since reference was made to time.

11 Also, just to give you a sense of what I anticipate
12 for the time today, we may or may not get through both closings
13 today. If not, we will finish up in the morning, and then I
14 will instruct you on the law, and you will start your
15 deliberations; or we may get through closings today, and I may
16 or may not start instructing you. I suspect the instructions
17 will come in the morning, but we will see. I want to make sure
18 we're getting breaks as you need it so that your attention can
19 remain at the level that it has for both sides as they proceed.

20 With that, Mr. Park, you may return to the podium.

21 MR. PARK: Thank you, your Honor.

22 When I left off, we were talking about trying to sort
23 out the technology, the electrolytic cell issue.

24 In 1990, Congress passed a Clean Air Act, and it was a
25 new law that basically told companies and industries in the

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Summation - Mr. Park

1 United States, at some point, we are going to issue regulations
2 that restrict the level of air emissions. It was not clear
3 when those regulations would actually go into effect, but they
4 would go into effect eventually. The regulations that went
5 into effect was what's known as NESHAP. Don't ask me what the
6 acronym stands for. NESHAP came into effect in 2005, but here
7 we are in 1990, Clean Air Act comes in. What you heard a lot
8 about is MagCorp's effort in predicting that eventually NESHAP
9 would get into effect, finding new technology to drastically
10 cut down their chlorine air emissions.

11 Through the course of this trial, you heard some
12 reference to the fact they were a big polluter, they had some
13 chlorine air emissions. One thing to keep in mind -- and there
14 is no dispute about this -- MagCorp was always within permitted
15 amounts. There were chlorine emissions, yes. They were within
16 permitted amounts.

17 With the new NESHAP coming on board, the goal was to
18 get new technology in place that would further diminish the
19 chlorine air emissions. They had the initial German
20 technology, the I.G. Farben cells. They had developed the
21 sealed cells that did, in fact, substantially reduce chlorine
22 air emissions. They wanted to do better. So they looked for
23 the Alcan cell. And that is where the Alcan cell came in. You
24 heard about them going out to Japan, doing some testing,
25 looking for the best that was out there, to increase the

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Summation - Mr. Park

1 production.

2 Just keep in mind, it is not just about the Clean Air
3 Act. It is about generally decreasing the amount of
4 electricity and power that they need to create greater output
5 of magnesium. So that was the goal. In the mid-'90s, the
6 company embarks on this effort to find this technology. They
7 find Alcan. They think it is terrific. They bring it on
8 board. They started it in 1996, and it goes through several
9 years of test piloting, which is not unusual.

10 Now, during this entire time period, I showed you that
11 magnesium production chart. They weren't waiting on the Alcan
12 cell, by any means. They were producing every ounce of
13 magnesium that they could sell. That is really important to
14 keep in mind. So when plaintiff puts this in the context of
15 doomed to fail and all this other kind of scary sounding
16 language, it has got no basis in the evidence. Yes, they were
17 looking for this next generation, which would drastically
18 curtail emissions and increase their productivity.

19 What the evidence actually shows is this -- Exhibit
20 9000 -- this is a memo that was created by Ron Thayer in
21 December of 1999. It was sent to Mike Legge. What it does, it
22 is a multipage document. You will have it available for you to
23 review during deliberations. It tells you -- again, forget
24 about the testimony in this case. People's recollections and
25 testimonies are always going to be flawed, always. Look for

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Summation - Mr. Park

1 the documents. Look for the stuff that was created back then.
2 And what this document does is it chronicles for you, in a
3 detailed, very professional way, what Ron Thayer is telling his
4 boss, Mike Legge, about the progression of all of their cell
5 testing, efforts, disappointments, progress. It is a document
6 that puts to rest any suggestion currently concocted by
7 plaintiff that there was any fear of failure, doomsday, or
8 anything along those lines.

9 What it shows you, it talks about Alcan cells. It
10 talks about sealed cells. Why is that important? Because
11 Alcan is not the only technology they have got going that
12 they're modifying. The sealed cells have been improving
13 through the modifications in such a dramatic fashion that if
14 you go to table 711, this table on this page, it compares the
15 various different types of cells that were under examination at
16 the time.

17 I won't spend a lot of time on this, but you look at
18 chlorine capture, the efficiencies, you look at the pounds that
19 are being put out, pounds of magnesium being put out, if you
20 study this, you'll realize that the sealed cell is actually
21 performing at almost the holy grail goal that Ron Thayer and
22 MagCorp had set for themselves.

23 Why is that important? It is important because, as
24 the witnesses told you, if Alcan didn't work out and if they
25 didn't find M-cells, the sealed cells were going to be awesome.

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Summation - Mr. Park

1 As it turns out, the M-cell was superior to everything. That's
2 the chronology. Those are the facts. This memo talks about
3 those facts.

4 Now, let's talk about the paragraph that describes Ron
5 Thayer's reaction to the Alcan cell. In the conclusion, Ron
6 Thayer says, "The program has a number of operating challenges
7 and problems, but does appear to be effective in reducing
8 operating costs. We appear to be able to decrease labor,
9 energy, and environmental expenses with these units. We have
10 met some, but not all of our original program objectives."
11 December 1999. This is Ron's report to Mike.

12 Mr. Beus, during his examination of Mike Legge, said:
13 Well, isn't it true that at a deposition you said the Alcan was
14 a failure? And Mike said, I did say that, I was mistaken.

15 Let's go to the documents, shall we? Let's quit
16 playing around with these deposition transcripts. Let's go to
17 the documents.

18 If any of you were asked a question about something
19 that happened 15 years ago, you might venture a guess, but I
20 think you pretty much would say, you know what, let me go to my
21 notes back then because it might be a little more reliable.
22 This is that note.

23 Now, in this document, there is a reference to the
24 fact -- and the plaintiffs have just spent so much time on this
25 passage -- where he says, "We need to pursue development and

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Summation - Mr. Park

1 installation of the cell technology to ensure our financial
2 survival."

3 Here we are, we've got a multipage document that
4 describes the strenuous efforts and the innovation that Ron
5 Thayer and his group is engaged in. And he puts that line in
6 that basically says we gotta be the best, in effect. That's
7 their doomsday statement.

8 This is what I mean when I say don't permit the
9 plaintiff to substitute snippets and passages taken out of
10 context for actual evidence, for what was really going on
11 during that time period. And what ended up happening? The
12 M-cell is best in class.

13 This technology issue is a red herring. It has got
14 nothing to do with the solvency problem question back then.
15 Was MagCorp saying, we are going to spend this amount of money
16 for technology? Were they hoping to get it sooner in place
17 than it actually ended up? M-cell was in place by May 2001.
18 No dispute about that. So what? Sometimes there are delays.
19 What has that got to do with this notion of insolvency in
20 October of 1995 -- I'm sorry -- December 1995 to October '98?
21 What is the relevance? When you have evidence that throughout
22 that entire period there is just a continued emphasis on capex
23 and R&D spending.

24 Let me go to this competitive landscape and the
25 magnesium market issue. Howard Kaplan got up here and he

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Summation - Mr. Park

1 walked you through two sets of documents. He created these
2 documents during that time period. One was his IMA
3 presentations, his presentations to the International Magnesium
4 Association. He had such status in that group that he was
5 doing these presentations about the state of the market.

6 The second category of documents that he went through
7 with you when he was on the stand were his memos to Mike Legge
8 that described for Mike during that time period what he was
9 seeing in the marketplace, what other people were saying about
10 the marketplace. You read any one of them, you will find a
11 balanced accounting of everything he is saying. This is good.
12 This is not so good. That could be improved. There is a
13 little risk out there. The Chinese are over here. The
14 Russians are over here. It is normal course, prudent
15 monitoring of the marketplace, of the competitive marketplace.
16 It is evidence of just extraordinary diligence, really. Read
17 these memos. Any one of them.

18 They turn those memos and taking passages out of them
19 in 1996 and say, well, you see, Howard Kaplan told you that in
20 1996 the Chinese are in Rotterdam. Who cares? North America
21 is the market. Alloy is MagCorp's market. MagCorp makes the
22 purest magnesium going out there. They are not threatened.
23 You will not see a doomsday, sky-is-going-to-fall-in, Chicken
24 Little statement by Mr. Kaplan during that time period, from
25 '96 to 1998.

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Summation - Mr. Park

1 Will you see him talking about the Chinese and the
2 need to keep an eye on them? Absolutely. To convert that to
3 what they would have you believe, to evidence of looming
4 insolvency, a crumbling foundation, pure 20/20 hindsight, made
5 up.

6 Did Howard Kaplan ever say while he was sitting in
7 front of you, you're right, Mr. Stirling or Mr. Beus? You're
8 right, we really were seeing what the Chinese were going to do
9 to us that happened in 2000?

10 I'm going to do a couple of the IMA presentations, the
11 presentations he made to the IMA in 1996. The first is Defense
12 Exhibit 8181, page 3. "Overall magnesium demand in 1995 hit
13 another record, up approximately 5.8 percent from 1994."

14 "It would seem the industry would remain in some sort
15 of balance to allow 4 to 5 percent growth per year in 1997 and
16 1998."

17 "This was surpassed in the second quarter of the year
18 where demand reached 82,050 metric tons. This first half of
19 1997 demand annualizes," yada, yada, yada, "increases of 9.6
20 percent." Everything is just going up.

21 Let's go to Defense Exhibit 86 -- I'm sorry -- 8307,
22 page 5.

23 We had skipped ahead. That is 8307. So there we are
24 in the first half of 1997, demand annualizes, which is an
25 increase of 9.6 percent.

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Summation - Mr. Park

1 Let's go to 1998 IMA presentation, 8388. "Overall
2 magnesium demand in 1998 was 7.9 percent above 1997, to set a
3 new record for Western consumption of 360,300 metric tons."

4 You can go through all of the IMAs. The memos, for
5 those of you who were taking notes, the memos to Mike Legge
6 from 1996, 1997, and 1998 -- and we don't need to show them
7 now -- Defense Exhibit 8275, 8335, 8384.

8 It is not just Howard Kaplan's data from this period
9 that proves a strong trend in North America. If you look at
10 Defense Exhibit 8908, this is a slide that was created by the
11 market expert, Robert Edgar, who shows you the powerful trend
12 upward during the entire '90s, where it falls in 2000. If you
13 look at Defense Exhibit 8454, page 1, in 2001, biggest drop
14 clearly was in North America, a drop of 22 percent.

15 In all of these memos, there is reference to Chinese.
16 It doesn't prove anything. It shows prudence and watchfulness.
17 It is not just the Chinese. Watch the entire competitive
18 landscape. Don't let them take things out of context.

19 What the Chinese did -- I mentioned earlier -- they
20 came in in 2000 and 2001. They not only accelerated
21 exponentially the dump of powder into the United States in
22 2000, but they dropped the price from \$1.19 to .87 cents per
23 pond, massive undercutting of the prices.

24 So when the plaintiff suggests to you, you know what,
25 you guys should have seen this might happen in 1996, ask them

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Summation - Mr. Park

1 for evidence of that. I'm actually going to give you some
2 evidence why that was not foreseeable.

3 You heard from Mr. Adams, the gentleman on video.
4 That was their market expert, the man with the British accent,
5 it with hard to follow what he was saying. He was their market
6 expert. He was part of CRU, a firm that specialized in
7 watching this market. Mr. Adams, their own expert, told you
8 the following -- it is on page 147 of the video, line 18 --
9 this is on cross-examination by my colleague, Mr. Haveles.

10 Question: Haven't you expressed as your opinion that
11 what happened with the export of Chinese powder in 2000 and
12 2001 was not foreseeable?

13 Answer: Well, I have expressed the opinion that we
14 did not -- we did not foresee it. If we had, we would have put
15 it in our report, which you have gone through carefully.
16 Whether it was foreseeable by others in the market is a matter
17 of speculation.

18 It goes on.

19 Question: Well, let me read you a report, your
20 rebuttal report, the last sentence of paragraph 49. It states:
21 I also accepted as unreasonable to argue that MagCorp should
22 have foreseen this particular scenario, referring to the
23 increase in Chinese experts.

24 Did you believe that sentence when you signed your
25 rebuttal report?

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Summation - Mr. Park

1 Answer: Yes.

2 Question: Back in the summer of 2012?

3 Answer: Yes. I -- we didn't see it. So it would be
4 very gratuitous of us to argue that MagCorp should have
5 foreseen it.

6 That is the evidence. It comes right out of
7 plaintiff's mouth, plaintiff's expert's mouth.

8 This market stuff, it is just another distraction. It
9 takes your eyes off the ball of what was happening in the time
10 period that must be your focus.

11 Let me now turn to the 1996 bond offering, and let's
12 put that in context. What is it and why did it occur? You
13 heard both Marjorie Bowen and Roger Grabowski tell you it is
14 very common for private companies, like MagCorp and Renco
15 Metals, to raise money by issuing bonds. They call it
16 leverage, you get leveraged., there is a lot of debt out there.
17 Unlike public companies that issue equity, shares, stock in
18 IBM, for example, private companies raise money through
19 issuance of bonds. It is very common.

20 You heard Roger Fay and Ira Rennert describe the debt
21 offerings. Mr. Rennert told you that one of the ways for
22 smaller companies to mature into the marketplace and to become
23 known to banks, to increase their liquidity, is to issue bonds,
24 to participate in the bond market.

25 I would submit that you can think of it like having a

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Summation - Mr. Park

1 teen-aged child who is about to leave the house. You give him
2 or her a credit card. Why? So that they can start using it.
3 They get a credit score. They make the payments on time. And
4 as a young adult, when they're looking for their first house,
5 they have got a credit score. They can get mortgages from
6 banks because they have a score that banks can rely on to feel
7 comfortable about this person. This is not that much
8 different.

9 So what is it that happened here? Well, in 1993, you
10 learned the Citibank had underwritten a smaller bond offering
11 for \$75 million. What happens in 1996 is DLJ, the investment
12 bank, comes to Ira Rennert and The Renco Group and suggests,
13 you do a refinancing.

14 Now, why is DLJ coming to Ira Rennert? Mr. Rennert
15 told you that it was not at all uncommon for major banks to
16 approach him or The Renco Group about doing new deals. Lehman
17 Brothers, you heard from him, even suggested that he sell
18 MagCorp to General Motors. Mr. Rennert wasn't interested.
19 This was in the '90s. DLJ comes to him and makes a proposal:
20 We think MagCorp is in such a good financial position, you
21 should do a refinancing, meaning take the 1993 bonds, refinance
22 it, like a new mortgage, refinance your mortgage, you extend
23 the terms, you get better terms. Rather than 12 percent
24 interest under 1993 bonds they were going to get a slightly
25 better one at 11.5 percent.

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Summation - Mr. Park

1 MR. PARK: But, importantly, it increases the term of
2 the maturity date of the bonds and it also benefits some of the
3 debt covenants that were attached to the initial 1993 bonds.

4 Let's take a look at Defense Exhibit 8180B. If we go
5 to the first page, this is a document that Mr. Rennert
6 identified during his testimony as a document that DLJ had
7 presented to him and you see that in March of 1996. It's DLJ's
8 presentation to him. And if you go to the first page, there
9 are a number of things that they provide in summary form on
10 this page about why it may be a good idea for Ira Rennert to
11 think about refinancing. They talk about in the second bullet
12 the restrictive covenants in the 1993 bond. That's what the
13 reference to the 12 percent senior notes is to. They talk
14 about in the second highlighted bullet, unless the company has
15 significant CapEx projects, it is very inefficient to leave
16 this cash sitting on the balance sheet. This cash, meaning
17 MagCorp is making money. It's inefficient to be sitting there.
18 What does that mean? Put it to use. Put it to an investment
19 where it can draw a much higher rate of return. That's their
20 thought.

21 And then towards the end they say: Assuming there are
22 no significant capital expansion projects, the excess cash
23 currently in the company, along with cash from new debt
24 issuances can be dividended to Renco Group.

25 They come to him and say, take some of this cash and

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Summation - Mr. Park

1 take some of the proceeds of the new bonds and take a dividend.
2 You haven't done one in a while. This is what they propose.

3 Go to the next page. They have a number of
4 alternatives as to what Renco Group could do and one of them is
5 case 3, option 3, tender offer, refinance existing notes, the
6 1993 notes. And if you go to the last page, case 3 is further
7 defined. It says: Refinance notes. And then they suggest
8 dividends of \$95 million. This is DLJ's notion. Now, Renco
9 Group thinks about it. They actually do it. It's not at 95.
10 It's at 75. But this is how this bond offering occurs,
11 something that DLJ brings to their attention as a possible good
12 thing for Renco Group and MagCorp to do.

13 So what happens? They do the bond offering. Now, one
14 of the things that the plaintiff's counsel have repeatedly
15 returned to, and you saw that on that cash needs chart that I
16 was so critical of earlier that Mr. Beus showed Mr. Grabowski,
17 it is this notion, you've got \$150 million debt obligation
18 that's out there. What are you going to do? It's going to
19 crush you. That is their theme. It is one of their many
20 themes, but that's one of them. It is a false theme. It is
21 one that is not based in financial reality, in business
22 reality. How do you know that? Because Roger Grabowski,
23 Marjorie Bowen at Houlihan Lokey, Ira Rennert, Roger Fay, the
24 CFO of Renco, they all told you the same thing. Private
25 businesses like this that are leveraged simply refinance.

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Summation - Mr. Park

1 That's what you do. That's how the 1993 got refinanced. The
2 1996 bonds will get refinanced. When is it due? 2003, way off
3 into the future. As you get closer to that, you get it
4 refinanced.

5 Look. Plaintiffs can walk in here and take a bunch of
6 jurors who are not in the world of finance and say, \$150
7 million debt, ladies and gentlemen, and get you to gasp. It's
8 easy to do that. But you got to take the evidence in the
9 context in which you find it. \$150 million debt offering with
10 a seven-year maturity, for a company that is making this kind
11 of money, that is as valuable as it was during the 1990s, is a
12 nothing. And it is part of what Marjorie Bowen at Houlihan
13 Lokey was looking at. That's part of their solvency analysis.
14 She told you during her testimony she did hundreds of solvency
15 analyses during the '90s for private companies that are
16 leveraged. It is that common.

17 Let's go to Defendants' Exhibit 8225 at page 5, the
18 paragraph before that. Again, this is a Houlihan Lokey report,
19 July 1996, Marjorie Bowen created it, sent it to MagCorp.

20 One of the things she says, if you look at the last
21 sentence of that paragraph: With regard to any such
22 refinancing of the new notes, nothing has come to the attention
23 of our personnel working on this engagement in the course
24 thereof that has caused us to believe that it is unreasonable
25 for us to assume that the new notes would be refinanced on or

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Summation - Mr. Park

1 before December 31, 2003.

2 This, again, in 1996, tells you what everybody is
3 thinking and what the expectation in the marketplace is. You
4 just get a refinance. If you have a home mortgage and it's
5 coming due in five years and it's \$100,000 and your house is
6 worth \$400,000 and banks are coming to you and saying, hey, we
7 got a new interest rate, what are you going to do? You are
8 going to refinance. In the private bond market that tells you
9 how common this is. Do not buy into this notion that's created
10 by plaintiffs that somehow having a bond issuance of \$150
11 million years and years later is a burden that you need to have
12 cash in hand to deal with. There is no evidence, not a single
13 witness, not a single document with support such a fallacy.

14 If we go back to the bond offering I want to take a
15 look at 2578, Plaintiff's Exhibit 2578. This is an
16 organizational meeting chart that DLJ created May 1996. And if
17 you go to page, the due diligence page, let's blow that top
18 part up, please, Derek. DLJ is leading this. They are the
19 underwriters. They are leading this effort to get ready for
20 the bond offering. And I'm not going to spend the time to go
21 through each of these items.

22 But I urge you to look at this document, take it back
23 and look at it. There is virtually no issue confronting
24 MagCorp. Potentially or in actuality the DLJ doesn't say we
25 want to take a look at it. Competitive landscape. The

F2OMBUC4

Summation - Mr. Park

1 duration of the contracts, how stable they are, environmental
2 issues, the state of technology. Talk about China, Soviet
3 Union, Ukraine.

4 Let's go to the next page, under environmental.
5 Environmental consultant to review plant and plant operation,
6 discuss pending problems in the litigation. Above that,
7 contracts, stability of contracts. Cost management program
8 towards the end. Discuss costs as relating to the new cells
9 that will be built in 1997 to 1998. They are talking about
10 building new cells for that time period. It ends up being
11 delayed more. But these issues are all being very closely
12 reviewed. It's called due diligence because everyone is being
13 diligent. They come in here after a bankruptcy and says, how
14 dare you do that deal. That's not the test. The test for
15 every one of the defendants that they have filed a lawsuit
16 against, the test is how careful and diligent and prudent were
17 they at the time, 1996. Heaven forbid if my judgments should
18 be tested on the basis of how some of my judgments later end
19 up. That's not the test, it's not fair, and it's not the way
20 it works. That shows you prudence. That shows you a level of
21 diligence. That is evidence.

22 Now, DLJ just doesn't do that. Ira Rennert, like all
23 these guys who knew about the finances, told you, we are
24 comfortable with the financial solvency. We are good. We have
25 seen these. We have lived with these numbers. We know this is

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Summation - Mr. Park

1 good. But DLJ says, I want to do something else. I want to
2 get a separate solvency opinion done by Houlihan Lokey. It's
3 their idea. This is how careful they are.

4 Who are these guys, by the way, DLJ? Who are these
5 guys? They are an independent underwriter. They are putting
6 their name, their brand, and their reputation behind this deal
7 because they are going out to some of the big boys on Wall
8 Street and saying, this is a good deal, buy into these bonds.
9 So they are going to want to make sure that they are not
10 missing anything.

11 One of the pieces of testimony you heard, and it's in
12 this document as well, is, they are separately represented by a
13 separate law firm, Cahill, Gordon, Reindel, a major Wall Street
14 law firm. Roger Fay told you they are specialists in this
15 area.

16 Why do they have their own law firm? Because DLJ has
17 their absolute own interest independent of whatever Ira Rennert
18 or MagCorp or anybody else cares about. They are going to do
19 their own diligence. That is the protection that was and the
20 prudence that was surrounding this deal, so they cause Houlihan
21 Lokey to do this diligence.

22 And what does she do, Marjorie Bowen? We talked about
23 her conclusion. I showed you the letter. She told you that
24 the way they do this analysis is to use the bankruptcy court's
25 legal standards for solvency and fraudulent conveyance. Think

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Summation - Mr. Park

1 about that. She is saying, we are going to do this so right
2 that there can be no question later on that we did it right.
3 We are going to do the full legal standards.

4 So she says we do the doom and gloom scenario. We
5 stress test these numbers. One of the big issues that have
6 just put me to sleep, frankly is, again, and again, there is a
7 talk about Howard Kaplan using a \$1.78 projection price per
8 pound for seven years in this projection that they sent to
9 Houlihan Lokey. I want to clarify what this is.

10 Houlihan Lokey says to MagCorp, we need a projection
11 of what you think that the price per pound of magnesium is
12 going to be and we need it for seven years. Howard Kaplan
13 says, well, let's see. The spot price last year or about now
14 is like \$1.90. It's high. But what I'll do as a projection is
15 shave it off and use \$1.78. And then he puts it out for seven
16 years because that's his projection. He actually doesn't do
17 seven years. Those two years get tacked on because that's the
18 time period that Houlihan Lokey wants.

19 Howard Kaplan doesn't use seven-year projections
20 because it's meaningless. He is just out there doing a budget.
21 He does it on an annual basis and you saw how accurate his
22 budgets are. But this is for a different purpose. Houlihan
23 Lokey wants it. They make it seem like that decision was a
24 careless reckless decision by Howard or Todd Ogaard to somehow
25 fool Houlihan Lokey. Houlihan Lokey is not being fooled. They

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Summation - Mr. Park

1 asked management for a projection and management provides it.
2 It's \$1.78.

3 Now, they had their expert and all of their questions
4 showing this spot price and how the \$1.78 is well above the
5 spot price as it actually transpires. It doesn't mean
6 anything. It's irrelevant. Why? Because Marjorie Bowen told
7 you she just doesn't accept management representations. She
8 gives it a haircut. She assumes a scenario that is too
9 optimistic. This fact, if you look at her work papers, let's
10 take a look at Defense Exhibit 8187. We showed you her
11 opinion, that letter. This is her work paper. Let's blow that
12 up. April 30, 1996. It is a multi-page financial analysis
13 telling you how she reached her opinion of solvency. It's got
14 a base-case scenario which means -- let's just take
15 management's numbers and run it and see what happens. It's got
16 a downside scenario, it's got a worst-case scenario, it's got a
17 stress test scenario, assuming that management's numbers are
18 wrong.

19 Now, we have just blown this up. Derek is ahead of
20 me. See if we can get it a little bigger.

21 So you see that base case number of \$1.86 -- I'm
22 sorry. The first one I can't quite read but the second one you
23 see clearly, \$1.78, \$1.77, \$1.78 on the bottom, right. That's
24 the projected numbers that MagCorp provides. But above it what
25 you see her doing is taking that 25 percent haircut off that

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Summation - Mr. Park

1 number, assuming that that number is going to be 25 percent
2 lower price per pound.

3 That's right, ladies and gentlemen. You spent hours
4 and days listening to criticism of \$1.78 and it is completely
5 irrelevant to the question of solvency, December 1995 to
6 October 1998. It was rendered irrelevant because Marjorie
7 Bowen didn't rely just on that base case number. She ran it,
8 because you do look at management's representations about
9 what's reasonable, but then you stress test it and that's what
10 she did.

11 What was her conclusion? Solvency, no problem. Just
12 another distraction, just another thing that they picked out
13 and decided to go after.

14 Now, this \$1.78, I just don't want to leave it out
15 saying this because I want to defend Howard Kaplan's decision
16 to use \$1.78. They make it seem so ridiculous that he would
17 use a \$1.78 projection and that it would be used for a
18 seven-year period. Mr. Edgar, the other market expert, Robert
19 Edgar, told you this. That's actually not at all unreasonable.
20 He was the head of sales and marketing for Norsk Hydro, one of
21 MagCorp's main competitors, and he's now a consultant and he
22 was an expert on the market. What he told you is something
23 very, very sensible.

24 If you are sitting in 1996 and you are asked, give me
25 a projection about what the price of magnesium is going to be a

F2OMBUC4

Summation - Mr. Park

1 year from now, two years from now, three years from now, what
2 are you supposed to do, kind of give it a wavy up and down just
3 for the sake of it? What Mr. Edgar told you is this. You pick
4 one number unless you have some basis for believing that
5 something is going to happen two years from now or four years
6 from now that would cause you to decide that number you've just
7 chosen is not going to be valid at that time.

8 And what Mr. Edgar told you is based on everything
9 that was known to the market in 1996. Picking \$1.78 was not
10 such a bad idea. And not varying it was a totally reasonable
11 decision. At the end of the day it's irrelevant to your
12 considerations because Marjorie Bowen's solvency analysis did
13 not rely on an assumption that, in fact, it would have to be
14 \$1.78 years down the road. It's just another distraction.

15 Now, let me give you another distraction that they
16 raised. Ira Rennert didn't read the Houlihan Lokey report.
17 Okay. You are right, he didn't. So what? So what? Ira
18 Rennert is the chairman of the Renco Group. He has many
19 companies under Renco Group. He has got a CFO named Roger Fay
20 who is his chief financial officer, a guy he has known since
21 the '70s, whom you heard testify. Roger Fay read the Houlihan
22 Lokey report. Roger Fay told you he reviewed it with Ira
23 Rennert. And everything is fine.

24 So what's the significance of the fact that Ira
25 Rennert didn't read the report? There is no significance.

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Summation - Mr. Park

1 Does that mean that the Houlihan Lokey report was irrelevant to
2 Ira or irrelevant to Roger Fay? No, it doesn't. Those guys
3 knew the financial documents. They were comfortable with
4 solvency in the financial strength of the company, but both Ira
5 Rennert and Roger Fay told you this when questioned.

6 If Houlihan Lokey had come in and said, hey, guys, we
7 have got a problem here, this note offering and the dividend
8 transfers that are being considered are going to cause a
9 problem, they told you what they would have done. They said,
10 okay, well, maybe we should reconsider. Of course they would.
11 Why wouldn't they? This is an idea brought to them by DLJ. Is
12 there any evidence anywhere in this trial or anywhere else that
13 you've heard that Ira Rennert said, we have got to do this come
14 hell or high water? There is no such evidence. This is a
15 commonplace transaction that occurred when a bank brought this
16 deal. It made sense. They did all the due diligence and it
17 was good to go.

18 If Houlihan Lokey had said, you guys are missing
19 something here, there is a problem, what do you think Roger
20 Fay, Ira Rennert and even the MagCorp executives would have
21 done? They would have said, let's do something else. There is
22 absolutely no evidence to suggest to you that that would not
23 have been their decision. That was the importance of the
24 Houlihan Lokey report. It doesn't matter that Ira Rennert
25 didn't read the report personally. It was important to the

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Summation - Mr. Park

1 diligent process.

2 We talked about Congress Financial earlier. It's not
3 just DLJ doing this diligence. These managers, including Ira
4 Rennert, manager of the Renco Group, they have got this group
5 of highly professional firms that are looking at the same
6 things that he is, and they are all giving this the green
7 light.

8 Congress Financial, who are they? They are not just a
9 lending bank. Todd Ogaard, Roger Fay, they both described for
10 you how powerful this entity is over the affairs of MagCorp.
11 Why is that? Because they have got a line of credit of over
12 \$30 million at any one time for MagCorp. You think this
13 company is not going to be a hawk over exactly what's going on
14 financially at the company that they are extending such a huge
15 amount of credit to? Of course they are. That's why Todd
16 Ogaard told you about the monthly reports that they would make
17 to Congress Financial reporting on what's happening.

18 And the other thing you learned is that Congress
19 Financial actually has the receivables of MagCorp. What does
20 that mean? Receivables, bills. So MagCorp sends out a bill to
21 a customer they just sold 100 pounds of magnesium, you owe us a
22 couple million dollars, that receivable held by Congress
23 Financial.

24 The level of reporting to Congress Financial and the
25 level of awareness of Congress Financial is not in question in

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Summation - Mr. Park

1 this case. Here they are, buying into this bond offering and a
2 dividend transfer and, as you will learn, as the evidence
3 shows, for every dividend that was subsequently taken, Roger
4 Fay and Todd Ogaard would tell Janet Last or others at Congress
5 Financial and get their approval. December 1995 to October
6 1998, Congress Financial knew about every single dividend. And
7 I showed you the graph. The credit bars are going up, up, and
8 up, increasing the credits every year.

9 Just put up Defense Exhibit 8149 just for a second,
10 Derek.

11 This is an example of a letter from Todd Ogaard to
12 Janet Last at Congress Financial Company. This is as of
13 December 1995. It talks about the section of the agreement
14 between MagCorp and Congress Financial, talking about projected
15 financial statements for fiscal 1996. So they put together a
16 projection of what they think they are going to do and they
17 have got to share that with Congress Financial. It's not just
18 what we did last week; it's what we think we are going to do
19 next week. That's the level of vigilance that Congress
20 Financial has over MagCorp's finances, and that's being sent
21 every month and that's not a year-end thing, but a similar
22 document is being sent every month by Todd to Congress
23 Financial. There is no dispute about that.

24 It's not just Congress Financial. We talked about
25 KPMG, external audit firm. This is the external auditor who

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Summation - Mr. Park

1 comes in and audits the books and records of MagCorp,
2 quarterly, annually. And both Todd Ogaard and Roger Fay
3 described for you how important their role is. They provided
4 the clean opinion, meaning an opinion that said, we are not
5 qualifying it any way in connection with the bond offering, as
6 well as all the other financial statements that MagCorp filed.

7 And you heard about 10-Ks. Once the bond, 1993 bond
8 offering was made, the company was required, Renco Metals was
9 required to submit a financial report and file it with the SEC
10 so it would be publicly available. You could go online with
11 the SEC and find all the other financial reports by every other
12 company that has a public bond offering out there. It's
13 available for people to look at and analyze what's going on in
14 that particular company.

15 KPMG has to sign off on these documents. KPMG is not
16 going to sign off on these documents if they actually think
17 there is a problem. If they do, they will do what's known as
18 qualified opinion. We are signing off, but it's qualified.

19 What you learned in this trial is that KPMG never
20 qualified or gave a nonclean opinion until February of 2001.

21 This is Defense Exhibit 8834, page 2. This is the
22 independent auditor's report. February 14, 2001, for the first
23 time they include this: As discussed in note 14 to the
24 financial statements, the company has suffered recurring losses
25 from operations and has a net capital deficiency that raise

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Summation - Mr. Park

1 substantial doubt about its ability to continue as a going
2 concern.

3 That passage tells you a couple of things. Number
4 one, KPMG is aware if MagCorp runs into problems. Number two,
5 KPMG will raise an alarm when they see that a company has run
6 into problems. There is actually a third. I forgot. KPMG
7 never raised any such concern until February of 2001.

8 What does that say to you again about your time
9 period, December '95 to October '98? As I said earlier, there
10 is a whole another set of professionals. It's the
11 institutional investors who bought the bonds.

12 What did they know about the company? You heard about
13 all of the diligence the DLJ did. You heard about all the
14 access that KPMG and Congress Financial had to MagCorp's
15 finances. What did the bondholders, the potential investors,
16 know? Terms like Fidelity or Harvard Investments.

17 When you take a look at prospectus, Plaintiff's
18 Exhibit 2033, and you'll have a very good idea of what they
19 knew. This is a prospectus that is sent to every potential
20 investor that might be interested in participating in this 1996
21 bond. You will have a copy of it. It is a thick document full
22 of information, financial. There is a management discussion
23 about challenges, all the issues that they are looking at, they
24 are thinking about. It's got a section in there about
25 environmental issues, technological issues, competitive issues.

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Summation - Mr. Park

1 Essentially all the things that you saw in that DLJ
2 presentation about due diligence that they did for due
3 diligence shows up in this prospectus.

4 If you go to page 11 of this document it tells all of
5 the potential investors how the proceeds of the bonds are going
6 to be used. It told them that \$75 million of it would be used
7 to pay dividends to Renco Group. It told them about the
8 contractual compensation payments to MagCorp executives. Those
9 are the NWAPA payments.

10 All these investors, sophisticated institutional
11 investors are told, if you want to get in on it, just be aware,
12 this is what's going to happen. This was sold out,
13 oversubscribed. Bonds were oversubscribed. Nobody had any
14 concerns about that.

15 Let's go to page 7, because this is the issue that
16 plaintiff and plaintiff's counsel repeatedly referenced. This
17 shareholder's equity deficit, the negative shareholder equity
18 number of \$81 million. You see that. This is yet another one
19 of those things where plaintiff's counsel come in and say to
20 you, look at that. It's a negative number. How could there be
21 any solvency? Every single witness to come in here to talk
22 about that told you, that is a big fat zero, nothing, for
23 solvency and business valuation purposes.

24 Why? Because if you bought a house in 1990 for
25 \$50,000 and it is now worth \$500,000, on a GAAP balance sheet

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Summation - Mr. Park

1 accounting it would still show as \$50,000. The current market
2 value of your house or of MagCorp has nothing to do with that
3 GAAP balance sheet accounting. That's why everybody said,
4 well, wait a second, this is a case about solvency and what the
5 value of the company was in '96 to 1998. And you're talking
6 about the amount that Renco Group bought MagCorp for back in
7 1989. It's irrelevant.

8 More importantly, you know how it's irrelevant. It's
9 not just me. It's not just Roger Fay and Ira Rennert and
10 everybody else who was asked. It's the noteholders, the
11 bondholders. They were told about this. You think they don't
12 know how to read a prospectus? You think they missed this?
13 The fact that this bond was sold out tells you, without any
14 question, this is a big nothing for purposes of figuring out
15 whether MagCorp is a good investment, whether MagCorp has value
16 in the future or today.

17 I am not sure where this was going, but periodically
18 Mr. Beus asked some of the questions or suggested to them that
19 not all the important information showed up on this prospectus.
20 It's not clear what information he is referring to. But if you
21 hear him say that when he gets up for his summation, ask him
22 this question to yourself. You are not allowed to ask
23 questions to us. But ask yourselves, really? Is that an
24 important fact that an investor would have cared about? If so,
25 why was there not a single bondholder who came into this room

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Summation - Mr. Park

1 to talk about that, to say, hey, jeez, I didn't know that.
2 Somehow I should have known that.

3 Mr. Beus in his opening statement I think made the
4 point that he has got to call our clients as witnesses because
5 they are the ones with personal knowledge during that time
6 period. If he is going to inject this notion that there was
7 some information in that prospectus that didn't have all of the
8 information that people needed to know, there are other people
9 with personal knowledge from that time period that he could
10 have gotten coming in here. They are called bondholders.
11 Bondholders filed claims in this case.

12 Where were they? Isn't the most logical conclusion
13 that you can draw is they didn't come here because they got
14 nothing to complain about? They knew everything was laid out.
15 And sometimes, ladies and gentlemen, things happen, a recession
16 comes in, the Chinese at the same time engage in illegal
17 dumping. Sometimes bad things happen. You got no basis to
18 come in and say, oh, jeez, I should have known about X, Y, and
19 Z. Don't let these little suggestions by counsel substitute
20 for evidence.

21 Now, we do know bankruptcy occurred. We do know that
22 there were -- I'm running out of time, so I want to get to the
23 environmental stuff.

24 Any time I make reference to something and you want an
25 exhibit about it, just ask and the judge will get it for you.

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Summation - Mr. Park

1 There was a loss of three key customers in 2000. There was a
2 memo from Mike Legge to Ira Rennert and said, we have lost
3 major customers, the Chinese are here. Mike Legge showed you a
4 monthly report of the end of '01 where he talked about 9,000
5 tons of magnesium that's just sitting on the shelves. They
6 can't sell it. There is so little demand. Bankruptcy is filed
7 in 2001, August of 2001.

8 The fact of that recession is not in question.

9 If I can get command over the Elmo.

10 You saw this before. It's MagCorp's sales of
11 magnesium. If I overlay on top of that the GDP chart, you see
12 almost a precise correlation of the pattern of what is going on
13 at this company. And, again, it is not just about the
14 recession. It is about what the Chinese did during that time
15 period.

16 I want to talk about the environment. It's a big
17 topic. MagCorp is a metal producer. They have byproducts.
18 It's an industry that has contaminants. That's why there is a
19 Bevill exemption. The policy debate from the 1990s occurred
20 when Congress passed a Bevill exemption to say certain
21 industries shall be exempted from standard RCRA obligations as
22 long as criteria are satisfied. What this case is not about is
23 the EPA lawsuit against MagCorp that was filed not during the
24 time period in question but in 2001. They would like to think
25 that all of the horrendous things they keep talking about were

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Summation - Mr. Park

1 a foregone conclusion.

2 You know it's not a foregone conclusion because here
3 you are, 20 years later, and there has not been any liability.
4 MagCorp is litigating that case and has been doing so for 2001,
5 and you should not decide that just because he keeps saying
6 dioxins and furans and all the rest of it that there must be a
7 serious problem here.

8 What actually ended up happening, as Tom Tripp
9 described -- again, documents are in evidence, and you can ask
10 for them -- what ended up happening is that before the Bevill
11 exemption was granted for MagCorp, the EPA was present, they
12 came and did the inspections. They looked at the sites. They
13 determined to grant the Bevill exemption. They talked about
14 process waste water.

15 If we can put that one document with the schematic up,
16 please.

17 They talked about the kinds of process waste water
18 that's created at MagCorp and is sent to the waste pond and
19 they said, this is Bevill exempt. The process waste water
20 that's created is now at issue with the EPA. They say, well,
21 no, not all of your process waste water is Bevill exempt. That
22 schematic on the left side is the schematic drawn by the EPA in
23 Washington after their inspection and prior to their granting
24 the Bevill exemption.

25 And they described the process waste water, scrubber

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Summation - Mr. Park

1 underflow, and scrubber liquor going to the evaporation pond as
2 all being ultimately Bevill exempt. The dispute today with the
3 EPA, found in 2001, is, we didn't mean all of those scrubber
4 underflow or scrubber liquor, in essence. There is only a few
5 streams that are Bevill exempt, not all of them.

6 So that's the dispute in a nutshell. And all you need
7 to know right now is that MagCorp has said, you know what, you
8 cannot look at that Bevill exemption and tell me that what you
9 are saying makes any sense. 2.46 million metric tons of waste
10 water was referenced in that same report. At the bottom it
11 says approximately 2.465 -- whatever -- metric tons of process
12 waste water reportedly were generated by the Rowley facility.
13 That kind of value encompasses all of the process waste water,
14 scrubber liquor flow, and the scrubber underflow. EPA
15 disagrees. Fine. We will have a disagreement. And that
16 litigation will continue.

17 But before that EPA exemption was granted, as Tom
18 Tripp told you, there was a reason to believe that the EPA
19 actually had sampled and had found HCBs and PCBs, trace
20 amounts. They knew about it before this exemption was granted.
21 So they can come in here and make this place seem like a
22 cesspool and it would be false.

23 Ron Thayer and Tom Tripp are out there, they have been
24 out there for decades. Ira Rennert had no problem going out
25 there walking a plant every single month. It is a well-managed

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Summation - Mr. Park

1 plant. This is not an environmental case. This is about
2 contingent liability. And if you think about contingent
3 liability, what Tom Tripp was looking at, you need to look at
4 the memo that he wrote to Roger Fay in November of 2004 to tell
5 you precisely, it's Defense Exhibit 8107, precisely what Tom
6 Tripp was thinking in 1994.

7 This is where he catalogs for Roger Fay, the CFO of
8 Renco, all of the potential environmental issues and not a
9 single one of them is meaningful in any way. In fact, if you
10 look at the last paragraph, he references a notice of violation
11 that the local Utah environmental agency had filed.

12 You need to keep in mind, the local agency called UDEQ
13 works with the EPA. They come and do inspections today. You
14 saw correspondence in this case where the UDEQ was asking EPA
15 region 8 for interpretations about the Bevill exemption. So
16 they are working together. So UDEQ had made an offer to settle
17 that case with MagCorp for \$30,000. And you know what MagCorp
18 said? Pound sand, not interested. You guys are wrong, we are
19 not going to give you \$30,000. That tells you something about
20 Tom Tripp and MagCorp's attitude about whether there was a
21 contingent liability or not. There wasn't. Today there is no
22 liability. That case ends up being settled for \$2,500 where
23 UDEQ says, all claims in our notice of violation is resolved.

24 Let's take a look at Exhibit 8822. This is a document
25 Mike Legge sends to Houlihan Lokey in connection with their

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Summation - Mr. Park

1 report. And basically says, at most contingent liabilities
2 constitute about \$600,000 a year, total nonconcern about the
3 environmental issues.

4 Let me move now. As I said at the beginning, even if
5 there was liability, just imagine on the assumption, arguendo,
6 for argument sake, we imagine it's 100 percent liability today,
7 refer back to Mr. Johnson and Dr. Powell about what it would
8 take. \$14 million, fines, cleanup costs, all in.

9 Their expert, Mr. Allen, you heard testimony that he
10 had suggested a huge number, like over \$70 million, all in,
11 without a single document to show you. You ask for all the
12 exhibits that the experts provided that you can examine to
13 determine how reasonable their analysis is and how well
14 supported they are. You will not see a document from
15 Dr. Allen. You will not see a document from Jason Frank. You
16 are just supposed to -- you know what, they are just jurors, I
17 guess I am just going to show them how smart I am and I am
18 going to tell them what my opinion is and they are just going
19 to accept it. It doesn't work that way. That's not proof.

20 There is nobody in this courtroom, including the
21 judge, who tells you how to evaluate the facts in this case,
22 and certainly not Jason Frank and certainly not Mr. Allen, who
23 gives you this huge number. How did he get to that number?
24 You heard that he talked about dredging three times more dirt
25 than even the EPA's expert would have recommended or was

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Summation - Mr. Park

1 thinking about. Examine Dr. Powell's analysis. He is the one
2 who said, you know what, just cap it, three foot thick salt,
3 impervious, and you are done. Even that's a lot of money. But
4 it's \$15 million, \$14 million, all in, even with the fines.

5 They talk about this fine of \$25,000 a day. You heard
6 Steve Johnson. They never really seriously criticized Steve
7 Johnson's analysis. He showed you the EPA manual as to how to
8 go about setting a fine. It's based on prudence, it's based on
9 fairness, it's based on what's enough. You don't ever apply
10 the statutory maximum. They didn't have a single witness come
11 in here to tell you that the statutory maximum has ever been
12 applied in the history of this country. They said, well, it
13 could be, it's possible. Green men on mars is possible.

14 Let's talk about what's real. Let's talk about what's
15 in evidence here. With the time remaining let me talk about
16 Jason Frank, and this is the one thing I have to say about him.
17 Compared to Mr. Grabowski, compared to Marjorie Bowen, who gave
18 you stuff to look at that you can examine some of their
19 assumptions and their calculations, Mr. Frank sat up there and
20 told you insolvency. What can I look at to verify that?
21 Nothing. He applied something known as a company-specific risk
22 premium, one of the most important metrics in a true business
23 valuation is the discount rate. If you see a company showing
24 \$100 million of value, depending on how much you discount that,
25 you could sink any company into insolvency. He applied a 23

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Summation - Mr. Park

1 percent discount rate because he applied the 10 to 15 percent
2 company-specific risk premium to what's the normal discount
3 rate. What's the result? Insolvency.

4 Mr. Grabowski told you that in literature the
5 company-specific risk premium is called the fudge factor. It's
6 a way to get something in. It's results driven. He said if
7 you are going to do it, you got to have data that you can rely
8 on and test. It's not just sticking your thumb up in the air
9 and see which way the wind is blowing, which is exactly what
10 Jason Frank did. You have nothing to verify. What he told you
11 is, the basis was his judgment. They want the owners of
12 MagCorp, the executives of MagCorp, who earned money during the
13 1990s to return that money for the vulture funds. You would
14 think they would have somebody more than Jason Frank to come in
15 and try to prove to you that that's a just result.

16 I submit to you, ladies and gentlemen, that they have
17 utterly failed to sustain their burden of proof. Shortly Mr.
18 Beus is going to stand up. I won't have a chance to respond.
19 And I'm asking you to do one thing because I will not get a
20 chance to respond. Ask him, where is the evidence of
21 insolvency? How can I rely on Jason Frank without anything to
22 look at? How can I rely on somebody who uses a
23 company-specific risk premium that I cannot judge? Even Roger
24 Grabowski cannot judge as to what's right or wrong. And if he
25 cannot answer those questions, ladies and gentlemen, I submit

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Summation - Mr. Park

1 to you, and I ask you to return a verdict in favor of each and
2 every defendant as to each and every claim. Thank you again.

3 THE COURT: Thank you, Mr. Park.

4 Members of the jury, we are going to take our lunch
5 break now. Your lunch is here. Since it's here we will do 45
6 minutes and then pick up with the closing arguments by the
7 plaintiff.

8 Thank you so much. Enjoy your lunch.

9 (Jury not present)

10 THE COURT: Anything to address before our lunch
11 break?

12 MR. HAVELES: Nothing here, your Honor.

13 THE COURT: Mr. Beus.

14 MR. BEUS: I only have one question. I had not
15 planned on spending much time with misrepresentations in the
16 prospectus. I was going to deal with a few things that are
17 there. But he raised those questions that opens that door a
18 little bit. Am I going to get in trouble if I do that?

19 THE COURT: Tell me what it is that you are thinking
20 about.

21 MR. BEUS: Well, what he said was, these bondholders
22 and DLJ and everybody looked at it and the prospectus told you
23 everything, everything, everything, and, therefore, they vet
24 for that. I would like to tell them a few things that they
25 didn't tell them.

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1 THE COURT: If it's in evidence.

2 MR. BEUS: It's in evidence. There is no question. I
3 don't want to get in trouble with your Honor.

4 MR. S. STIRLING: Your Honor, one other --

5 THE COURT: Mr. Park.

6 MR. PARK: I don't know what he is referring to here
7 as to what it is.

8 By the way, I don't think we opened the door. He
9 raised that very issue with a number of witnesses. So I was
10 trying to anticipate something like that because otherwise I
11 wouldn't be able to respond to it. For him to suggest that I
12 opened a door to something that he already raised --

13 THE COURT: For present purposes there is no objection
14 to him, so long as he is relying on matters in evidence,
15 directing his summation to your claim that they had everything.

16 MR. PARK: I'd like to know what he is referring to,
17 Judge.

18 MR. BEUS: For example, ALCAN didn't work at the time
19 they did the prospectus. For example, they didn't tell him
20 there are chlorinated hydrocarbons on the property.

21 MR. PARK: No objection.

22 THE COURT: Agreed.

23 MR. S. STIRLING: Your Honor, one other point related
24 to that. Mr. Park also said that, where are the bondholders
25 complaining about having been misled or deceived in this thing?

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1 Can we tell the jury that we were ordered not to go into that
2 subject during this trial? We were not allowed to prove those
3 misrepresentation claims in this trial unless the defendants
4 opened the door, which they did in their closing argument. Can
5 we tell the jury that we were ordered not to prove
6 misrepresentation claims in our case in chief? Otherwise, your
7 Honor, we might very well might have wanted --

8 THE COURT: Go ahead, Mr. Park.

9 MR. PARK: Your Honor, it is, in fact, a statement of
10 fact that not a single bondholder raised any issues. It was
11 simply a response, again, to Mr. Beus injecting that very issue
12 into this case at least twice.

13 THE COURT: What are you pointing to?

14 MR. PARK: I don't have that cite. I believe it was
15 with Roger Fay. He raised this issue about the prospectus. I
16 think he was talking about environmental nondisclosures. And I
17 can try to find that, Judge. But he clearly --

18 THE COURT: I don't know, for example, if you objected
19 at that point and it was sustained or what.

20 MR. PARK: I'd have to go back.

21 MR. BEUS: I can put that in context, your Honor.

22 THE COURT: I don't want you getting into a discussion
23 with the jurors -- you mean right now you can put it into
24 context?

25 MR. BEUS: Yes.

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1 THE COURT: Go ahead.

2 MR. BEUS: They did the same thing there with Mr. Fay.
3 They had gone through the various people who had done the due
4 diligence, this person looked, this person looked, and this
5 person looked. And I said who do this, who did this and where
6 is this and where is that? There were objections and I was
7 allowed to do it. I am not going to spend much time with it.

8 THE COURT: I just want to know what you want to say.

9 MR. BEUS: I want to say there were a number of things
10 that were not told to people in both the '93 and the '96
11 prospectus.

12 THE COURT: That's fine. That's fine. Again, just
13 drawing on evidence. You can't just say that they were not
14 told things. If there are things in evidence that aren't in
15 the prospectus, then you can make that point.

16 I thought we had moved on to Mr. Stirling asking for
17 something related.

18 MR. BEUS: What we would really like is, when we don't
19 bring bondholders in, when we are told misrepresentations are
20 not part of the case, he shouldn't have the ability to make
21 that argument. That should be straightened out in front of the
22 jury. The empty chair is a major issue for jurors.

23 (Continued on next page)
24
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1 MR. HAVELES: Mr. Beus has already said he asked
2 questions of Mr. Fay about what wasn't in the prospectus --

3 THE COURT: True. If they had sought to bring
4 bondholders in, that was part of what you objected to.

5 MR. HAVELES: There was never any proposal to bring
6 bondholders in. No bondholder was ever deposed. They never
7 listed a bondholder on a witness list. Therefore, I would not
8 have objected to something that would have been pure
9 speculation on our part. Moreover, it is a statement of
10 undisputed fact that no bondholder ever filed a claim under 33
11 or 34 act with respect to statements in the offering
12 memorandum.

13 THE COURT: When you say it is a statement of
14 undisputed fact, you mean a stipulated fact?

15 MR. HAVELES: No, it is an undisputed proposition
16 that -- it is not in the statement of facts -- but it is an
17 undisputed proposition -- and Mr. Beus is not in a position to
18 suggest otherwise -- that there was never a bondholder who
19 commenced an action for misrepresentations under the securities
20 laws with respect to the offering memorandum. The fact is that
21 there were issues raised, as Mr. Beus acknowledged, in
22 Mr. Fay's examination about what was in or not, what was not in
23 the prospectus. There were questions about that. They could
24 have brought a bondholder in here for any purpose. Never
25 deposed one, never put one on the witness list. If they had,

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1 we would have evaluated it, but it would be speculative of us
2 to say we should have objected to something that was never
3 proffered.

4 THE COURT: All right. I think it was on the edge. I
5 think Mr. Park did tie it to what was in evidence as a result
6 of Mr. Beus's own questioning, so I'm going to not start
7 getting into an explanation to the jurors because it just isn't
8 directly implied, it isn't directly in front. There is no way
9 to say that they were prohibited from calling bondholders.

10 If you want some sort of missing witness instruction
11 that both sides have access to the ability to call witnesses
12 and the like, I would certainly consider something along those
13 lines.

14 MR. HAVELES: We would have no objection to such an
15 instruction, your Honor.

16 THE COURT: I think, because you asked questions that
17 that was in response to and because there was no explicit
18 preclusion of calling bondholders, I think the bounds of what
19 was discussed in the closing were comparable to the bounds that
20 occurred at trial and, in part, due to your very question. So
21 we will leave it at that.

22 If you want some sort of instruction, you can propose
23 it to me by the end of the day to make clear that both sides
24 had access to all witnesses.

25 Okay. Anything else, Mr. Beus?

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1 MR. STIRLING: No. Thank you, your Honor.

2 THE COURT: All right. We will see you in about
3 40 minutes.

4 Thank you.

5 (Luncheon recess)

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1 AFTERNOON SESSION

2 (2:45 p.m.)

3 THE COURT: Anything to take up?

4 MR. BEUS: No, your Honor.

5 MR. HAVELES: No, your Honor.

6 THE COURT: Mr. Beus, do you want the board up with
7 the writing on it?

8 MR. BEUS: I do. I will take it down promptly. I
9 want to make some comments on it, if that is all right.

10 THE COURT: Okay.

11 MR. BEUS: He had taken it down, and I asked him to
12 put it back up.

13 THE COURT: Okay. I will just remind you, Mr. Beus,
14 if you're pointing at the board, it's hard to hear.

15 MR. BEUS: I apologize if I turn my back on you a
16 little bit.

17 THE COURT: That's fine.

18 MR. BEUS: I may not get that done.

19 THE COURT: I can't hear you.

20 MR. BEUS: If they don't go with me, I will go back to
21 the big board.

22 THE COURT: Okay. I will say, given the time, my plan
23 is to just bring them first thing -- I think we will get
24 through today, barring anything unexpected, but I will make
25 sure we get breaks, Mr. Beus -- I will bring them in tomorrow

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1 morning and do the charge.

2 MR. BEUS: Thank you for the breaks. Afternoons are
3 tough.

4 (Continued on next page)

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1 (In open court; jury present)

2 THE COURT: Members of the jury, I hope you had a
3 pleasant lunch.

4 We now turn to the closing arguments, summation on,
5 argument behalf of the plaintiff.

6 Mr. Beus, whenever you're ready.

7 MR. BEUS: Thank you, your Honor.

8 First of all, let me thank each of you, as did
9 Mr. Park. That is one of the few things we share a view on.
10 You have been a phenomenal jury. You have been awake. I hope
11 I can keep you awake this afternoon. Afternoons are always
12 tough. I hope you had a good lunch but didn't eat too much.

13 What I heard earlier this morning made me
14 uncomfortable. Lee Buchwald was appointed by a federal
15 bankruptcy judge. He was asked to look at what this estate
16 had. He testified, when he got appointed in 2003, there was
17 \$220,000 and lists and lists of creditors. There's no doubt
18 there are some bondholders that are vulture funds, but there
19 are a lot of bondholders who are not, and there are trade
20 creditors, businesses that provide goods and services. There's
21 the EPA. There's the IRS. There's the Bureau of Land
22 Management. And it goes on. These people were left high and
23 dry while Mr. Rennert took \$118 million, he and his compadres.

24 Mr. Rennert, you saw him. Very smart, very wealthy,
25 and very generous to people who do what he asks them to do.

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Summation - Mr. Beus

1 I'm going to turn around, but I have to stay here for
2 the microphone if I can.

3 I want you to take a look at this list that Mr. Park
4 put up there. You may not be able to see. This is the list of
5 the so-called people that independently did due diligence.
6 Mr. Legge, Mr. Fay, Mr. Ogaard. They all worked for him. They
7 have net worth appreciation payments.

8 DLJ, do you know what they got paid? Put up 2033.
9 Let me tell you what they got paid. Can you put it up for me,
10 Bart? It is in the prospectus, take my word for it.
11 \$4.5 million to do that bond offering. There you see it. It
12 is right in the prospectus, Exhibit 2033. Four and a half
13 million dollars. We don't know how much KPMG got paid, but
14 they got paid whatever they billed. Houlihan Lokey, we don't
15 really know, either. Roger Grabowski, we know how much he got
16 paid, kind of. He said he got paid, quote, upwards of a
17 million dollars, end quote. If you're rich enough, you can get
18 all kinds of professionals to do things for you.

19 Let me take just a moment and deal with Houlihan
20 Lokey, if I could. Would you put up 812 for me, because what
21 you just heard from Mr. Park isn't what Houlihan Lokey did.
22 812, please. This is their report. Here is what it says: "We
23 have relied upon and assumed, without independent verification,
24 that the financial forecasts and projections" -- the seven-year
25 forecast, and you heard Mr. Park just say they're meaningless.

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Summation - Mr. Beus

1 Somebody should have told Houlihan Lokey they are meaningless.
2 That's what they relied on.

3 "Provided to us have been reasonably prepared."

4 Let's go back. How were they prepared? They had only
5 been doing one-and-two-year projections. They went out seven
6 years. They went out five years and tacked on two more years.

7 "And reflect the best currently available estimates of
8 the future financial results and condition of the company."

9 I will show you in just a moment one of the
10 assumptions that they ask Houlihan Lokey to make, which they
11 did. They didn't do an independent investigation, that is what
12 they say. You're going to have \$20 million a year in cost
13 savings with Alcan. I'm going to show you that in just a
14 second.

15 I want to finish this. It goes on, it says, "We have
16 not independently verified the accuracy and completeness of the
17 information," and we do not assume any responsibility with
18 respect to it. They haven't done a physical inspection, and
19 they haven't done anything else.

20 1091, can you put that up. You see HLHZ, that means
21 it came out of their files it is in evidence, Trial Exhibit
22 2562. What are they going to do? Energize building 1 north
23 Alcan cells by April of 1998.

24 Alcan had never been tested. Never tested. You've
25 all heard the adage garbage in, garbage out. And they knew it

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Summation - Mr. Beus

1 hadn't been tested. When this work was done, Alcan wasn't even
2 licensed until August of 1996, and they want to say the best
3 we've got to vouch for what we're doing is Houlihan Lokey.

4 Then they're going to energize another building.
5 There were four total buildings. That's what's going on here.

6 1094. Let me show you the reduction in costs. If you
7 look right over there, you see when they come on, the cost of
8 94.7, that's the cost of goods sold, that is the '94 numbers,
9 the second one, 1998, that's what they're going to do. Look at
10 the reduction. 79, 78, 80. See the reduction? That's from
11 the Alcan cells. Didn't happen.

12 In fact, what happens is costs go up. Put up 824.
13 This is also in evidence, Trial Exhibit 2729. You go back to
14 90, it was 99 cents. This is right out of their documents,
15 this is their production documents. You see, by '94, it is up
16 to \$1.10.

17 Put up the next page, 818, please. There you go.
18 '95, 92 cents, and then '96, it jumps to \$1.20, \$1.30.

19 817, please. Look at it. It goes all the way up to
20 \$.57. Alcan didn't work. It failed.

21 Marjorie Bowen didn't ever say she came in and made an
22 appraisal for a purchase or a sale. I showed you the
23 documents. There they are. They're in evidence. When you see
24 them, you can visit about them.

25 Now, you remember one of the things Mr. Park said? He

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Summation - Mr. Beus

1 said it was not unusual to spend seven years to develop a cell.
2 I think I got that quote.

3 I think I said it wrong. I wrote it down. Seven
4 years is not unusual to develop a cell. That's what he said.
5 Think about that as I take you now through some evidence.

6 I asked Mr. Grabowski -- by the way, Jason Frank, we
7 were limited on time, no question about it, but what did he
8 use? He used CRU's, an independent set of projections for
9 revenues. What did he use for costs? The exact costs that
10 came out of MagCorp. You know why they didn't take very long
11 with him? They couldn't lay a hand on him. Who is he? He is
12 a guy that does a lot of appraisal work, valuation work, for
13 banks, including Wells Fargo. You heard that background. No
14 one challenged it. He is very qualified.

15 I want to be kind when I say this, Mr. Grabowski may
16 just be a little overdue. But let's go to Mr. Grabowski
17 because he has written a book, and he wrote one entire chapter
18 of that book on company-specific risk. He didn't do that as it
19 related to MagCorp. I will get there in a minute. He said
20 MagCorp is like ALCOA. But let's look at what he did say.

21 639. This is Mr. Grabowski at page 2222. How do you
22 do that? How do you make that determination that a company as
23 of a particular date back in time was able to pay its bills?

24 It's a really good question, isn't it? Let me tell
25 you what Mr. Rennert would like you to believe. If you can pay

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Summation - Mr. Beus

1 this month's bills, you can pay your bills. I ask you to put
2 that in juxtaposition with Mr. Park, who says it is not unusual
3 to develop a cell over seven years. If it takes you seven
4 years to build a cell, one of the things you have to do is to
5 have money to last through that seven years. That goes to
6 this. Let me show you.

7 He says: Well, you look, first of, all at forecasts
8 made at that time. And you want to analyze the forecasts, and
9 he says, whether they are reasonable. You put your best
10 estimate on it.

11 Can you go to 640 for me, please. He goes on. This
12 is Mr. Haveles. This is not me cross-examining him. Is there
13 anything else to which you look?

14 Well, you want to look then at whether or not what the
15 cash balance is in the beginning, how much the business will
16 earn, how much you'll have to pay for things like capital
17 expenditures.

18 Seven years to build a cell. That's a capital
19 expenditure. Seven years to have Houlihan Lokey to give you a
20 solvency opinion, thinking it may take seven years to build the
21 cell. They never had seven years of cash. Never, ever, ever.
22 Why? They sucked it out and looted it out in dividends. What
23 did you hear Mr. Rennert say about that? Oh, I didn't want to
24 leave it in there because I wouldn't get a good return on it.

25 Hello? Anybody home? He could have invested it in

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Summation - Mr. Beus

1 MagCorp while he was waiting to get the development. No. He
2 took virtually every dollar out of MagCorp that he could suck
3 out of it. He looted that company and left the creditors
4 holding the bag.

5 Look at what Mr. Grabowski gives us. He says you got
6 to look at how much you have to pay for things like capital
7 expenditures, interest, and all the things to run the business,
8 and whether or not at the end of the day you'll still have a
9 cash balance. That's the ability of paying bills in the normal
10 course of business. That's how it is defined in the
11 literature. You take all of those things into consideration,
12 then you either do have it or you don't have it.

13 Go to 650, would you please. Mr. Grabowski, this is
14 their expert. What data did you use for the expected profits?

15 You look at projections.

16 We know all about projections. You heard more of that
17 than you probably even want to hear.

18 You're looking at projections of investment that has
19 to be made to keep the business going.

20 Ability to pay bills is not like you and I may think
21 of it. Can I make the rent payment at the end of the month?
22 Can I pay the tuition? Can I pay those bills? This is paying
23 bills over a reasonable period of time. And when her Honor
24 instructs you, that's the language she will use. Can you pay
25 your bills over a reasonable period of time? What's

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Summation - Mr. Beus

1 reasonable? It is on the context. What is the context?

2 Mr. Grabowski gave it to you. Mr. Park helped. He put a
3 timeline on it. Investments, capital expenditures, remediation
4 costs, and \$150 million that they have got to pay back.

5 Would you put up 959 for me. You'll recall -- it is a
6 lot easier to see over here, for me at least -- this EBIDTDA
7 number on the side is their number. I took that from their
8 graphs. There is no argument about the \$177.4 million. These
9 numbers over here, if you recall, I took Mr. Grabowski through
10 them. These were all numbers that over a reasonable period of
11 time you've got to pay. Are you going to have enough money to
12 do that? Well, interest you got to pay. Taxes you got to pay.
13 And I got Mr. Grabowski to agree with all of that. Technology,
14 you have to pay for it. That is the underlying assumption that
15 was made. Those numbers are right out of their documents.

16 Then, we have these dotted lines from low to high on
17 what their remediation costs would be. There's a disparity in
18 those. That's a decision you'll have to make. And when you
19 make it, you'll put it in the context of a willing buyer and
20 willing seller, what would be the appropriate number. You'll
21 have to decide whether Mr. Powell's low number, after 14 years
22 of litigation, he is going to get off of it for \$2.8 million.
23 And I will talk to you about probability in a minute. Or
24 whether it is going to be the whole number that Mr. Tripp, who
25 was on the scene at the time. Oh, they say, they put that

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Summation - Mr. Beus

1 together really quick. You didn't hear Mr. Tripp say on that
2 stand that number is wrong. He testified.

3 Now, Mr. Park said, forget -- this is a quote --
4 forget about the testimony. When he said that, I thought, why
5 in the world have we been here for almost a month. That's
6 insane. I don't want you to forget about the testimony. I
7 want you to remember it.

8 So you take \$157 million and then the note. You heard
9 Mr. Park say, oh, you can just refinance the note.

10 Well, let me tell you what you can refinance, and you
11 have heard it in this trial. You can refinance your accounts
12 receivable because you got somebody else to collect from. You
13 can refinance the magnesium ingots because you can go take
14 those and sell them. You might get hit a little bit. That's
15 what you can do. Refinancing a loan that MagCorp owns is
16 really problematic.

17 Would you put up Exhibit 2744, page 33, if you can.
18 This is the loan agreement here. Can you go to page 33 for me,
19 please. Blow that up.

20 I did this with Mr. Grabowski. We were going a
21 hundred miles an hour when we went through this, I appreciate
22 that.

23 This is a covenant that a borrower -- and according to
24 Mr. Grabowski and every witness, it is typical in every loan
25 document. What it says: "Borrower has obtained all material

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Summation - Mr. Beus

1 permits, licenses, certificates, approvals." And it goes on,
2 is in compliance in all material respects with a whole bunch of
3 laws, and the last was the environmental laws.

4 MagCorp didn't even get a permit. MagCorp didn't even
5 get a permit. They are in violation of the law. When you're
6 in violation of the law in a loan covenant, let me tell you
7 what happens. The bank or the bondholders or whoever the
8 lender is says you're in default, everything is immediately due
9 and payable. If you buy a car, you don't make car payments for
10 three months, you know what a bank will do? They will come and
11 take the car. That's exactly what happens here. If you're in
12 default, they can come and take the car.

13 What does that mean? That means you don't get
14 Mr. Park's seven-year period to build a cell.

15 MR. PARK: Objection.

16 THE COURT: Overruled.

17 MR. BEUS: You don't get that seven-year period to
18 build a cell because they're going to say -- the bondholders
19 say, pay me now. If the bondholders had been told the truth
20 about the conditions of the cells and the environmental
21 problems that are there, they would have called the loan. Or
22 they would have at least had the right to call the loan. But
23 you're not going to go get refinanced.

24 Go back for me, would you, to cash because that is
25 what Mr. Grabowski said. Put up 960. This is a parallel

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Summation - Mr. Beus

1 chart. You see there's the cash over that period, and the cash
2 should have stayed in the business. Ability to pay bills means
3 you leave the money in the business. They don't have to leave
4 it in cash. They can invest it. Mr. Rennert said he would
5 invest it in hedge funds. He can do that. But you don't rip
6 it out of MagCorp, have the creditors sit there and rip them
7 off, because that's what happened here. That's exactly what
8 happened.

9 One of the jury instructions, one of the claims we
10 have is you can be insolvent, you don't have to do any
11 arithmetic on assets, liabilities, which is higher. If you
12 conclude when you deliberate that the ability to pay bills as
13 defined by Mr. Grabowski and as defined by her Honor in the
14 jury instructions you will have, that's it. You tell
15 Mr. Rennert to put that money back. To put it back. He got
16 it, and he shouldn't have had it.

17 Look at what they have here. You mentioned their cash
18 needs, which we do there, and I took interest and taxes out
19 because they were paid. I deleted those numbers because they
20 were paid. The technology, 58.8. That comes directly from
21 Mr. Ogaard's October 31st, 1998 document. If you can find it
22 in the documents, you will understand.

23 Mr. Grabowski agreed with that. You can take any of
24 those other lines on the remediation and the note. They never
25 had the ability to pay their debts as defined by valuation

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Summation - Mr. Beus

1 standards.

2 706. This is Mr. Ogaard. Remember, in 2000,
3 Mr. Rennert testified he went and talked to the bondholders and
4 said, hey, I will pay you. He first told you, I will pay you.
5 I was surprised. He said, I'd pay.

6 Then, when we really got into it, he said, well, what
7 I asked them to do was not make me pay the interest payment and
8 then down the road I might make you pay. Then, I said:
9 Mr. Rennert, did you agree to guarantee it? You sign on for
10 it? Wouldn't do that. What he did was just put that off
11 again. That was intentional conduct so that he could take the
12 proceeds from Sabel and try to put it in an M-cell. And then
13 he acquired this company after the bondholder and the creditors
14 were left holding the bag, he acquired it in the bankruptcy.
15 Tell Mr. Rennert put that money back.

16 406, this is Mr. Ogaard. I'm sorry. 706. I
17 apologize. I gave you the wrong number. Mr. Ogaard's
18 testimony, even after not making that payment, that is the
19 first bond payment they missed. Interest, they had to pay
20 interest twice a year. Was MagCorp able to continue to pay its
21 bills? They passed on an \$18 million payment. If you pass on
22 an \$18 million payment, you would think you would have some
23 money left over.

24 Here is what he says: No. Even after stopping
25 that -- even by not paying that bond interest payment in

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Summation - Mr. Beus

1 January, we were in a horrendous cash flow situation. We had
2 tapped out the Congress Financial line all the way, and we were
3 asking our vendors -- our vendors, that's the same as trade
4 creditors -- to extend their payment terms.

5 That's what Mr. Rennert did. If he had done what he
6 was supposed to do on ability to pay bills, he would have
7 kept -- I just got a note. I misspoke. I said 18 million.
8 That's an annual payment. It should have been 9. I make
9 mistakes, I'm supposed to get corrected. I apologize for that.
10 He's a tough task manager.

11 What happens here if they don't pay these vendors?
12 And they take them, instead of paying in 30 days or 60 days or
13 90 days, 120, as long as they can get. You'll have documents
14 when you'll go through the documents where all that is laid
15 out. I don't think there was very much testimony except
16 Mr. Thayer here.

17 Ability to pay bills, you don't have to do any
18 arithmetic for that. You don't have to balance the assets
19 against the liabilities. That is a judgment call on your part.

20 There is another claim that is just a judgment call on
21 your part that doesn't take any arithmetic. It's called unjust
22 enrichment. You will be asked, not to do arithmetic, not to
23 see whether the assets and liabilities match or don't match,
24 you will be asked in the jury instruction that you will get
25 from her Honor, it will go something like this: If you find it

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Summation - Mr. Beus

1 unfair and unconscionable and if Mr. Rennert benefited,
2 directly benefited from this \$118 million, you have the power
3 as a jury --

4 MR. HAVELES: Objection.

5 THE COURT: Sustained. I will provide you the exact
6 wording in my instructions when I give you the instructions.

7 Go ahead, Mr. Beus.

8 MR. BEUS: You will have the ability to make a
9 decision to make him put the dividends back that he got.

10 Now, let's go to the arithmetic claims. I may not get
11 to breach of fiduciary duty, but you will follow those without
12 any trouble at all. Let's go to arithmetic claims because
13 these are fairly complicated, and we probably, as lawyers, did
14 a pretty bad job of laying it out as clearly as it should have
15 been.

16 Mr. Grabowski, again. I'm going to use their expert
17 where I can. 473. What role -- this is again, Mr. Haveles
18 asking this question. What role does judgment play in the
19 determination of solvency?

20 Very first sentence, valuation is an exercise in
21 judgment.

22 There's no science to this. They were very critical
23 of Jason Frank because Jason Frank said I think MagCorp is
24 unique. Mr. Grabowski said, no, it is just like Reynolds,
25 Kaiser, ALCOA, the guideline companies he used.

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Summation - Mr. Beus

1 So what does he say you have to do? He says you can't
2 be uninformed when you exercise your judgment. He has to go
3 out there and gather data about the characteristics of the
4 company. I have to find out what data an investor would use in
5 assessing how much this company is worth.

6 474. What else did he testify to? What role does due
7 diligence play?

8 It's the key to understanding the industry and the
9 business.

10 You can't make judgment calls unless you do some work.
11 Understandable. You first understand the industry, and then
12 you understand the individual company in question.

13 Then, you have to apply that to a definition of value.
14 Mr. Grabowski gave us that. 472. You look at it as though a
15 hypothetical willing buyer and a hypothetical willing seller --
16 what would they exchange this property for. That's assuming
17 you have all relevant information.

18 So you put yourself in the position of would you buy
19 MagCorp. And when you buy MagCorp, you take on all of its
20 liabilities. You got to fight with the EPA. You got to pay
21 the \$150 million. You've got to pay every liability that's out
22 there. So put yourself in the shoes of saying, would I buy
23 MagCorp and would I pay something north of \$170 million,
24 because that was generally the debt. Before you get to
25 remediation costs.

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Summation - Mr. Beus

1 If you would go back and put up 959 for me, please.
2 What you're taking on is some variation of the block there on
3 the right for \$447 million. We can argue until the cows come
4 home as to whether Mr. Tripp is right at 157. That is the head
5 of the environmental department at MagCorp. That's his number.
6 That's the worst-case number. His low-case number is 82.
7 You'll see that right here. Then you've got Mr. Powell, Mr.
8 Allen, you've got all of those numbers, but what you have on
9 this chart is not in dispute. Those are the numbers. Now you
10 say, would you buy that, would you take on the EPA litigation.

11 641. Just to make sure that you know that I am giving
12 you evidence. This is Mr. Grabowski. How do you determine
13 whether assets exceeds liabilities? You have to take the value
14 an investor would pay and you have to compare that to the
15 liabilities. What I just told you is exactly what
16 Mr. Grabowski said.

17 So, I'm going to deviate for one second. 1093. This
18 is a document that Mr. Grabowski created. Remember this
19 document? Where he had total net debt-like liabilities. He
20 has these numbers: 142, 143, 141.

21 Do you remember what he did to get that number, so he
22 could push these numbers, the liabilities down as far as he
23 could? For this whole time period, there is \$150 million in
24 note offerings that are due. How do you get from 150 to 141
25 and make that work into all of your numbers? How do you do

f2o4bcu5

Summation - Mr. Beus

1 that? You may remember when I asked the question, how did you
2 do that, Mr. Grabowski, or words to that effect; and his answer
3 was, after a little twisting by me, I took the cash and
4 subtracted it from the liabilities. That's what he did when he
5 ran through his numbers. Took the cash -- you saw those cash
6 numbers on those charts that Mr. Park showed you. He
7 subtracted the cash number from the liabilities to come up with
8 the value.

9 He, then, gave you an example of how you do a
10 valuation. I thought his example was a very good one.
11 Remember the house example? You go into a subdivision, lots of
12 houses are nearly the same or exactly the same or a little
13 bigger or a little smaller. He said, what you do is you look
14 at the house, and then if you see another house like it, you
15 turn it into a square foot price. If you have 1,000 square
16 foot house, it is \$100,000, you get to a square foot price and
17 then you just match those up. That's what he did in that
18 example.

19 Then, if you will recall, I asked him, isn't the very
20 best comparable -- because you're trying to compare things --
21 if you're in a subdivision and you have a house exactly like
22 your next-door neighbor's and you got the same granite, same
23 carpet, same windows, same everything, the house next door
24 sells for \$100,000, you can say, assuming it was on the market
25 and it was sold, my house has got to be worth about a hundred

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Summation - Mr. Beus

1 thousand.

2 I asked him this question: What's the very best
3 example of any comparable in the world to come up with these
4 metrics to know what your house is worth? He gave me a very
5 good answer. If you've got the very same house that sold
6 earlier or later, all you have to adjust is for the market a
7 little bit in between. That's the single best comparable.

8 And you know what, ladies and gentlemen? We have that
9 comparable in this case. Timing is a little different. That
10 comparable occurred in 1993. It was called AMAX. AMAX, as
11 you'll recall, was the seller of the company in 1989 to
12 MagCorp. Mr. Rennert didn't pay cash for all of that. He took
13 money, and then he added a \$12 million note, and he promised to
14 make \$2 million payments every six months on that note, and the
15 note is in evidence. You can see it if you want. Did that in
16 August of '89. Now we get to the offering in 1993. And guess
17 what? There is still \$10 million owed on that note. Now, that
18 should tell you something. Because it should have been paid
19 off by that time. That \$2 million every six months -- not
20 quite -- nearly paid off.

21 Let me show you what the prospectus shows, 535,
22 because this was disclosed. This comes right out of the
23 prospectus in 1993. The AMAX note is at \$10 million, this is
24 April 30, 1993. The note is August of 1989. You click
25 through. There should be a much smaller balance on that note.

f2o4bcu5

Summation - Mr. Beus

1 I don't dare do the arithmetic for sure one of you will catch
2 me. Then, it says, "This amount represents a subordinated note
3 payable to AMAX, which is carried as long-term debt on the
4 company's financial statements."

5 The company -- you remember me asking Mr. Rennert --
6 Mr. Rennert negotiated to purchase that note and accrued
7 interest and 3.6 million of other related obligations for
8 \$7 million. So what was owed in total was \$13.6 million. He
9 got a discount.

10 Let me show you the note. 953, please. There it
11 shows the note. That's the note. It is in evidence. You see
12 the six-month payments.

13 Put up 400, if you would. This is Mr. Grabowski. Do
14 you know whether MagCorp was keeping current -- at page 2314 --
15 on the obligations of the note?

16 He says I don't remember, if it was -- that they had
17 to pay interest periodically or if it was a bullet loan.

18 Do you remember how much the note was?

19 He says it was \$10 million.

20 686, please. Now we look at the note offering. I
21 asked him: Is this something you looked at for his valuations
22 for December of '95? Did he look at this?

23 He answers yes.

24 Why did he look at this? 687.

25 He says he looked at that because it would be

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Summation - Mr. Beus

1 required. He had some standards that he had to look at, and he
2 had to look at things that far back. He was required to do
3 that.

4 So what do we know? We know that he looks at a
5 \$10 million note that should have been nearly paid off. It
6 wasn't paid off. Then, there's a haircut, a huge haircut. He
7 takes \$13.6 million worth of obligations and he gets it paid
8 off for \$7 million. The math is easy if it were \$14 million.
9 But I have done the arithmetic. It is 48 percent discount. I
10 want you to remember that 48 percent number. On the very best
11 comp that exists in this company. 48 percent discount.

12 Now I'm going to tell you right now why. Jason Frank
13 used 22, 23, or 24 percent discount rate. The higher the
14 discount rate, the less the value of the company.
15 Mr. Grabowski used 10 and 12. Amazing. We will get to that in
16 a minute.

17 690. Now let me tell you what I asked.
18 Mr. Grabowski, looking at this document and based upon your
19 experience, and assume for the purpose of this that the
20 security that we've read there is a security on the stock of
21 the company. You do understand that AMAX would have the right
22 to sell the stock if it were not paid? Correct?

23 I don't -- I'd have to read the note to know the
24 actions they could take if they weren't paid.

25 Did you read the note? Remember, he admitted that it

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Summation - Mr. Beus

1 was required. I then asked: Did you read the note?

2 He said no. Our first date was 1995, was our first
3 date. This information about the business is not relevant to
4 the 1995 valuation date, the transfer date.

5 Can you imagine that testimony? The very best comp he
6 doesn't take into consideration, and he says it is irrelevant.
7 Yet he read the prospectus because he was required to. That
8 should tell you a million dollars, like the net worth
9 appreciation payments and like all the other payments, got in
10 the way of objectivity.

11 688. I'm sorry. 1009. I want you to look at this
12 testimony because I asked Mr. Rennert, knowing we would get to
13 this question: Did you have any view that you were not
14 obligated, meaning that MagCorp was not obligated to pay the
15 \$12 million note?

16 I wanted to know whether there was a problem. Why he
17 had a 48 percent discount rate. So if there was a dispute,
18 i.e. the note is not owed for some reason, I wanted to know
19 that.

20 Here is Mr. Rennert's testimony: I'm of the view that
21 MagCorp was obligated to pay the note.

22 I would like you to infer that AMAX didn't want to
23 foreclose on the stock of MagCorp because they could have
24 foreclosed on that stock if somebody showed up and bid, they
25 have gotten the entire \$13.6 million or at least the

f2o4bcu5

Summation - Mr. Beus

1 \$10 million on the note. They chose not to do that.

2 Mr. Rennert testified, we negotiated --

3 MR. HAVELES: Objection.

4 THE COURT: Overruled.

5 MR. BEUS: Mr. Rennert testified that the money was
6 owed, there is no dispute they had the security. It's like if
7 you have a loan on your house and you've got a mortgage. They
8 had a mortgage on that stock, so they could have had the rights
9 to force that stock to be sold to get paid.

10 Did they? No. What does that tell you?

11 48 percent first is the discount rate. A little
12 earlier in time. So when you think of that discount rate, you
13 want to remember that. Second, these people at AMAX were
14 providing technical services, so they were around knowing what
15 was happening at MagCorp. That is how the \$3.6 million came
16 together. And they didn't want this business back.

17 689. Then, I asked him: You knew that; right?

18 Yes.

19 There is no reference to that in your report or in
20 your appendix?

21 Not that I recall.

22 So Mr. Grabowski ignored and didn't put in his report
23 or in his appendixes anything about this 48 percent discount.
24 He passed on that. He passed on that. Do you know why? If he
25 had put a 48 percent discount in that, Jason Frank's number

f2o4bcu5

Summation - Mr. Beus

1 would have looked completely ridiculous. They would have been
2 so insolvent, it would have been hundreds of millions of
3 dollars. So what does he do? He ignores it. And remember, he
4 admitted that was the very best comp.

5 19., just so there is no misunderstanding, I want to
6 clear this. I asked Mr. Rennert: Did AMAX have a lien on all
7 of the stock of MagCorp?

8 I believe so.

9 Would they have the right to take the entire stock
10 back and own the facility?

11 I am not sure that's accurate.

12 Did you understand all of the stock of MagCorp was
13 used as security, pledged, so that the note would be paid?

14 He says yes.

15 685. Then, I asked Mr. Grabowski: What portion of
16 the 1993 earnings came as a result of the transaction?

17 He said, I don't remember that number.

18 I'm going to tell you how that worked. He had a \$6.6
19 million discount. You put it into earnings because you've got
20 forgiven of debt. You combine that \$6.6 million with the
21 losses they had had over the prior five years. It was
22 \$26 million negative.

23 MR. HAVELES: Objection.

24 THE COURT: Sustained. The jury will disregard the
25 last statement of Mr. Beus.

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Summation - Mr. Beus

1 MR. BEUS: Let me move on to what else Mr. Grabowski
2 didn't look at. Put up 690, please. I'm sorry. 742.

3 This is a question that was asked, and you may not
4 remember the Legge affidavit by date, but Mr. Legge filed an
5 affidavit in the bankruptcy court. We have seen it a number of
6 times. In 2001. And I'm quoting from that, where it said --
7 it is Exhibit 2206 -- We always knew the environmental issues
8 would create an obstacle to completing a sale or plan of
9 reorganization.

10 Mr. Grabowski -- this is information, if you -- it's
11 later than his time period, but if this is something that is
12 knowable as a result of this information, he is required to
13 take that into consideration.

14 What does Mr. Legge say? We always knew.

15 Remember back in the December 1999 meetings, they
16 couldn't do a sale because of both the remediation problems and
17 the technology problems. Alcan didn't work, and they didn't
18 have anything else. What does he say about this document? I
19 never read this document. Because if he had read it, the
20 question he would have had to have asked -- and he had meetings
21 with Mr. Tripp -- Mr. Tripp, did you know that in '95? If
22 Mr. Tripp had told him the truth, he would have had to say yes.
23 In '96, he would have had to say yes, in '97 and '98 and all
24 the transfer dates when Mr. Rennert was taking this money from
25 the company.

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Summation - Mr. Beus

1 743. Would you put up Exhibit 2672, another affidavit
2 of Mr. Legge. This, again, is in the bankruptcy court. It's
3 in 2001. I'm quoting from it. "A major impediment to the
4 debtors' ability to emerge from bankruptcy is the uncertainty
5 that the United States' claims in the RCRA lawsuit, including
6 its claims for civil penalties. These claims have had a
7 chilling effect on the attempts to finalize the process to
8 attract investment in or a purchase of MagCorp?"

9 What does he say? I never saw this?

10 Then, what does he say? It doesn't pertain to events
11 that happened after my dates. You can't do that. You can't
12 pick and choose what you're going to do.

13 He really didn't look at the AMAX 48 percent discount.
14 He didn't look at -- they always knew they had these
15 environmental problems.

16 968. Let me show you a little bit of what we were
17 reading from. Here's the affidavit itself right here,
18 paragraph 32 of it, Exhibit 2206.

19 Now, let me tell you what's worse than all of that:
20 How Mr. Grabowski went about coming to his evaluation. I'm
21 going to show you in a few minutes that he considered the key
22 assumption in values was the price of magnesium. Back to
23 Houlihan Lokey. They got a projection, \$1.78 for seven years.
24 That makes no sense.

25 Mr. Grabowski has to assume what are the future

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Summation - Mr. Beus

1 profits, cash flows, EBIDTDA, whatever matrix you want to use.
2 697. It all starts with what is the price of magnesium times
3 the number of tons or the number of pounds because it is price
4 per pound. Look at the question: What price of magnesium did
5 you use after the first transfer date after July of 1996?

6 This is the most amazing thing that you can even
7 imagine. He did not know.

8 Let's talk about a few of the things on the
9 environmental. By the way, I want you to know I heard Mr. Park
10 say: Listen to the evidence. He also said: Don't, forget the
11 testimony. He told you that in this summation.

12 I don't want you to forget the testimony. That's why
13 I'm taking -- I'm probably boring you to death a little bit
14 with some of the granularity that I'm going through here to
15 show you some of the testimony.

16 So he doesn't know about that.

17 737. This next piece is unbelievable. You don't have
18 any recollection of ever reading any correspondence between
19 MagCorp and the EPA; did you?

20 No, I do not recall that.

21 He took a site visit. He had conversations with
22 management. And he didn't read what the communications were
23 between the EPA and MagCorp?

24 Here's what you start feeling like. I can get to this
25 number you want, a couple hundred million dollars, if I don't

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Summation - Mr. Beus

1 look at anything, if I don't look at AMAX, if I keep these
2 binders really tight, if I don't look at that 48 percent, if I
3 don't look at the EPA communications, and if I don't even get a
4 price for magnesium.

5 739. This question, "Did you can ask specifically
6 about what was known about the extent of the contamination by
7 hazardous substances when you met with management?

8 Can't recall asking that specific question.

9 961. He didn't see this document, either. We have
10 all seen this so many times. 2001, cost of remediation. There
11 is no question that the cost of remediation in 1996 or '97 or
12 '98 might have been different than this. There might have been
13 some inflation on it. Take 2, take 5, take 8, take 10 percent
14 off of it. It really doesn't matter. You heard the testimony.
15 What you could get in a couple of hours or a couple of days or
16 whatever it was they asked Mr. Tripp to do, he came up with
17 detailed numbers.

18 963. Look at the numbers. He breaks them down. He
19 breaks them down by replacing the ditch. He goes through each
20 of the details. Then, he prepares alternatives. When you run
21 those numbers, you get to \$82 million. If you run the
22 alternatives, the expensive ones, it is \$157 million, but it
23 really doesn't matter. There is no way anyone in the world
24 would show up and buy, a willing buyer/willing seller analysis,
25 and take on this kind of liability. And this does not include

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Summation - Mr. Beus

1 penalties. This is just the cost to remediate. That's what he
2 says, RCRA remediation costs for bondholder disclosure, which
3 by the way -- I will pass on that. Thank you.

4 745. I asked him if he saw Mr. Tripp's estimate.

5 I don't remember. He had no recollection of seeing
6 it.

7 738. What did he do? I want you to get into his head
8 because he is a very nice gentleman and a very good witness.
9 He could turn and look at you and make you feel very
10 comfortable and make you want to trust him. But he didn't look
11 at anything before the transfer dates, including the most
12 important comp. When you get to October 31, 1998, he doesn't
13 look at anything after that.

14 So here's the question: You never asked about the
15 extent of the contaminants of the hazardous substances at the
16 MagCorp facility in '95 to '98; did you?

17 Listen to what he did. We had discussions about
18 environmental issues when I interviewed management, and there
19 had been a notice of violation -- you've heard this through the
20 whole trial -- and it had been settled, and as far as I was
21 concerned, that put that behind me -- behind it.

22 He was done. He didn't take environmental
23 considerations at all.

24 But let me show you 85, please. This is Mr. Rennert's
25 testimony in this trial. Did you have any understanding of

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Summation - Mr. Beus

1 what it might cost MagCorp in the '95 to '98 time frame to be
2 RCRA compliant?

3 We had many discussions, ongoing discussions, at
4 business review sessions in this regard.

5 Do you remember how many times he said he didn't know
6 anything at all to me? We used a lot of time having to read
7 his deposition because he had a so-called refreshed
8 recollection. That is really pretty hard to believe. He says
9 this spontaneously, and we found no document. He says, I got
10 refreshed for this testimony, so I could say things differently
11 at trial than I said in my deposition. His answer: Nothing
12 was significant. The number \$7 million, \$8 million sticks in
13 my head.

14 754, please. Would you put up 8222. This is a
15 question: Do you recall this requirement that all statutes,
16 laws, ordinances, or government rules and regulations have to
17 be complied with or otherwise you're in default? This was the
18 \$150 million note indenture there at the top.

19 He said, I don't remember reading this, either. He
20 made the assumption in this trial that you could refinance even
21 if you were in violation of loan covenants where they could
22 call the loan due.

23 814. That's the compliance certificate that has to be
24 sent to the bondholders on a regular basis. They never once
25 said we're not in compliance.

f2o4bcu5

Summation - Mr. Beus

1 Let's keep going. 753. What else did Mr. Grabowski
2 exclude? I asked him: You ignored the fact that there was a
3 lawsuit in 2001 in your evaluation?

4 Answer -- look at this answer -- 2001 is a post-event.
5 He cut the world off. He put those blinders on just like this
6 and said, I'm not going to look at anything before
7 December 1995, I'm not going to look at anything after
8 October 31, '98.

9 So you didn't take it into consideration?

10 I did not take it into consideration.

11 He didn't even look at that lawsuit to determine
12 whether it was talking about dioxins, furans,
13 hexachlorobenzene, chromium, zinc, arsenic, all of those things
14 that existed there even in the '95 to '98 time frame.

15 When you read the jury instructions and when you hear
16 the judge instruct you, ask whether or not he had a duty. Was
17 that known or knowable if he had looked at that as to those
18 time frames?

19 Then I asked him the simplest question of all. 398.
20 I asked him: Tell me what MagCorp's reserve was for
21 environmental liability.

22 It was small. He didn't know.

23 (Continued on next page)

F2OMBUC6

Summation - Mr. Beus

1 MR. BEUS: Now, 402, please: Changing the subject a
2 little bit I asked him this: If you think about a hypothetical
3 willing buyer, with all the information to make a decision,
4 they would evaluate whether the company had enough technology
5 in place to survive, wouldn't they?

6 It's a pretty simple question. Do you have enough
7 technology to survive? Or do you need enough money to get you
8 through seven or eight or nine years or however many years it
9 may take to invent that technology?

10 Look at his answer: No. Absolutely not. They would
11 look at whether or not they had the ability of being able to
12 make the technology over time operate and work.

13 Because he knew they didn't have the technology. He
14 knew the sealed cell and the IG Farben cell didn't work. It
15 produced magnesium, don't misunderstand. But they had to have
16 an iron stripper. That cost several million dollars. If they
17 didn't have an iron stripper, they made nine cents a pound more
18 to get the brine out of the Great Salt Lake, pure enough so it
19 would not decompose everything in their cells.

20 So he says, I don't look at whether they actually have
21 the technology. I look to see whether they are smart people.
22 I submit they probably are very smart people, but they didn't
23 have the technology. So if you don't have that technology,
24 remember what he said in the very beginning, you've got to have
25 enough capital to get you through what the periods are going to

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Summation - Mr. Beus

1 be to discover that technology. They never came close to that.
2 Do you know why? Because Mr. Rennert looted this company. He
3 ripped that \$118 million out.

4 949. You've all seen this document. It's a document
5 dated 30 September 98, one month before the last dividend was
6 taken. There is a document almost like it earlier, a year
7 earlier. Mr. Ogaard sends this and it goes off to Renco Group.
8 Sabel's September results not yet available, but assume break
9 even. If \$2 million dividend is taken, Sabel's loss could be
10 as much as 150,000. While 2 million is currently available for
11 dividend -- that's under a formula -- with projected negative
12 cash drain over next three years.

13 Look at what they are predicting. Negative cash drain
14 over next three years, with cell CapEx costs, together with mag
15 price declines. We urge extreme caution.

16 Right then he should have never taken that October
17 document. And that language is nearly identical. The dates
18 are different.

19 The year before they warned him of extreme caution.
20 What did they do? They say: Here we got CapEx cap
21 requirements, \$58 million. No one could argue about that.

22 Do you know why Mr. Grabowski couldn't deny that?
23 Because it was within this window, December 31, 1995 to October
24 31, 1998 that he had to opine on. This was a document that was
25 there. That's why he agreed with my chart.

F2OMBUC6

Summation - Mr. Beus

1 Can you put my chart up one more time, 960.

2 This is the cash chart. They are told here, here is
3 the \$58 million. They are told here there is going to be a
4 cash drain over the next three years. Adequate capital?
5 Absolutely not. No adequate capital, unjust enrichment.
6 That's real, real simple.

7 Mr. Rennert has an ability to kick it down the road.
8 He has been in litigation with us for 12 plus years for us to
9 get here. He has been in litigation with the EPA for 14 years.
10 Kick it down the road. Then he finds every possible excuse
11 that you can think of. One of the excuses here was, you've
12 heard the word perfect storm, perfect storm, perfect storm.

13 Let me just show you, you saw Mr. Park put on this
14 overlay showing what happened with the GDP. Let me show you
15 the whole GDP and let me remind you, Mr. Rennert worked on a
16 Ph.D. in finance at NYU, a terrific school. Just to get in a
17 Ph.D. program in finance, you can conclude he's very, very
18 smart.

19 Put up 916. Here is what you were not shown. I want
20 you to look at this. This is perfect storm or a mild
21 recession. All you saw was a very little snippet where you saw
22 things go down. This is not like almost any recession you've
23 seen. It's as mild as can be. In fact, and what you see here,
24 that's the time period where they claim there is a recession.
25 You still got positive GDP. When gross domestic proceeds are

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Summation - Mr. Beus

1 still positive, that's as mild a recession as you can have, and
2 I'm not the only one saying it. Let me show you Mr. Thayer's
3 testimony.

4 Would you put up 456, please.

5 What does he say? He had a model recession and then
6 he said you had the Chinese flooding the market. I am going to
7 talk about whether they should have known about the Chinese in
8 a few minutes.

9 THE COURT: Mr. Beus, I have snacks for the jurors.
10 We are going to break here and take about a 10-minute break.
11 Thank you very much.

12 (Jury not present)

13 THE COURT: So that's an hour and I figure we will try
14 to do two short breaks. That was the time.

15 Matters to take up.

16 MR. PARK: Your Honor, I did rise to object on Mr.
17 Beus' repeated reference to my saying that the cells can take
18 seven years to build. I don't recall ever saying seven years.
19 I was going to let it pass the first time. But when he used it
20 at least three other times to make it seem like there is some
21 undisputed fact here, I think that's misleading.

22 THE COURT: You said that the pilot was seven years.
23 Am I remembering that right?

24 MR. PARK: I think I said several years. I never said
25 seven years. I would never have thought to put that number on

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Summation - Mr. Beus

1 it. I just think that needs to be corrected.

2 THE COURT: Mr. Beus.

3 MR. BEUS: I heard seven. If I misspoke -- I clearly
4 heard that. I'm an old guy with bad eyes, but I have got
5 pretty good ears.

6 THE COURT: You are overdue.

7 MR. BEUS: I'm overdue.

8 THE COURT: I thought I had heard it, too, but maybe
9 it was several and it sounded like seven.

10 MR. PARK: It's possible. Seven years is a long time
11 and it has implications.

12 THE COURT: What's the application?

13 MR. PARK: The application is to correct it, first --

14 THE COURT: What are you asking me to say?

15 MR. PARK: To indicate to the jury, or maybe Mr. Beus
16 can correct it, and I would be fine with that as well, that he
17 said that I had said seven years, and I had not said seven
18 years. He just misheard. I think that correction would be in
19 order.

20 MR. BEUS: My suggestion is maybe the court reporter
21 can find it.

22 THE COURT: I did a term search for seven and the only
23 time it comes up is in referencing not this. I don't know. It
24 doesn't mean that it's not in there.

25 MR. BEUS: I will just not use it again, but I do not

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Summation - Mr. Beus

1 want an instruction.

2 THE COURT: It appears to be wrong and you are not
3 disputing that it's wrong, right?

4 MR. BEUS: I heard seven.

5 THE COURT: We will search the transcript again and if
6 it's not in there then I'll correct it.

7 MR. PARK: Thank you, your Honor.

8 MR. BEUS: Your Honor, I took some time about that and
9 I wrote it down at the time and so did my partner. He should
10 have stood up and objected the first time I said it if he
11 really didn't think that was correct. That's what I heard.

12 THE COURT: He did object. I overruled it.

13 MR. PARK: Your Honor.

14 THE COURT: He objected at the time. I can see that
15 at the time I searched the transcript.

16 MR. PARK: Simply would not make any sense for me to
17 say seven years. ALCAN --

18 THE COURT: Is there anything in the record, Mr. Beus,
19 that would have supported his saying seven years?

20 MR. BEUS: Yeah. If you look at what it took from
21 1995, they get the first production cell of an M-cell in 2001,
22 so that's nearly seven years. I can show you memos in '95.

23 THE COURT: Go ahead. What do you want to show me?

24 MR. BEUS: I don't have it in front of me, but we have
25 got -- can you get me the document that has the bullet points.

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Summation - Mr. Beus

1 I don't know whether it's March of '95 or September of '95.
2 Where they are in the process of working with ALCAN at that
3 point in time and they license it in August of '96. It's
4 Exhibit 8997.

5 Can you put that up, Bart.

6 THE COURT: While you are doing that, I'm term
7 searching for seven and so far it's only in the context --
8 maybe what was in my head, the seven-year projections,
9 obviously.

10 MR. BEUS: I'm sorry. This is October of '95. There
11 you see it.

12 Blow up the bottom part, if you would.

13 This is where they are going to Japan or they had been
14 to Japan to work on this to get it in place. It's not quite
15 seven years by the time they get it in place

16 MR. HAVELES: That was due diligence, your Honor.
17 They signed the licensing agreement in July of 1996 and the
18 first production cell was put in place in May of 2001. That's
19 less than five years.

20 THE COURT: Just to be clear, you want me to say that
21 it's five years and not seven years.

22 MR. HAVELES: The curative instruction was that
23 Mr. Park did not say seven years. He used the word several.

24 THE COURT: But in your view it's five years, not
25 seven years.

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Summation - Mr. Beus

1 MR. HAVELES: The totality of the project was less
2 than five years.

3 MR. BEUS: That's not true.

4 MR. S. STIRLING: That's not correct.

5 MR. HAVELES: The work that was done beforehand was
6 due diligence. It was buyers' due diligence before they signed
7 the contract. There was no development work that was begun
8 until after Mr. Thayer testified, until after the license was
9 signed. And all this memo shows is they went to make a visit
10 to help inform them when to sign a licensing agreement.

11 THE COURT: I don't see it. I have done the term
12 search for it. I think that it was a mishearing of several for
13 seven. And if you are saying you spent some time on it, Mr.
14 Beus -- you didn't spend more than five minutes. I'll credit
15 you five minutes and I'll tell the jury that you referred to
16 Mr. Park having said seven years for the cell development, but
17 in fact he said several.

18 MR. BEUS: Your Honor, if we have to make that
19 correction, I would rather myself do it rather than the Court.

20 THE COURT: What are you going to say?

21 MR. BEUS: I've been informed during the break that
22 Mr. Park meant to say several. We don't know whether he said
23 several or seven.

24 THE COURT: I just checked the transcript and I don't
25 see the word seven.

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Summation - Mr. Beus

1 MR. S. STIRLING: Do you find the word several years?

2 THE COURT: I have not searched for it. You have the
3 Live Note, too.

4 Here it is, several. In the mid '90s the company
5 embarks on this effort to find this technology. They find
6 ALCAN. They think it's terrific. They bring it on board.
7 They started it in 1996 and it goes through several years of
8 test piloting, which is not unusual. That's what the
9 transcript says, Mr. Beus.

10 MR. BEUS: Whatever you would like me to do I'll do,
11 your Honor.

12 THE COURT: How about this. You had heard Mr. Park
13 say seven years, so you have referred to that. In fact, he
14 said several years. Okay?

15 MR. BEUS: Okay.

16 THE COURT: Just to put it in context, I'll say that
17 Mr. Beus commented recently on Mr. Park having said during his
18 closing that it took seven years to pilot the cell technology.
19 In fact, Mr. Park said it took several years. Okay, Mr. Beus.

20 MR. BEUS: Yes. May I also then say that the record
21 then shows five?

22 THE COURT: If the record shows five, you can make an
23 argument after I give my instruction. You can make arguments
24 from the record.

25 MR. BEUS: Is there any way I can make that instead of

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Summation - Mr. Beus

1 you? They will think I've cheated when I did that and I don't
2 feel like I cheated at all.

3 THE COURT: Tell me what you are going to say. I'm
4 fine with you saying it.

5 MR. BEUS: I would just say, Mr. Park told me he did
6 not say seven. He said several. And if I said seven and he
7 didn't mean seven, I don't want --

8 THE COURT: He didn't say seven. You misheard him.
9 If you want to say you innocently misheard him, he said
10 several. You had heard it as seven. I'm correcting my having
11 said that he said seven.

12 Other matters.

13 Mr. Stirling.

14 MR. S. STIRLING: Nothing else.

15 THE COURT: I think you have each shown two different
16 versions of 2785. In your closing is it possible for you to --
17 it's not this document. You showed 2785 during the course of
18 your closing, Mr. Park.

19 MR. HAVELES: There are two. There is 85 and 86, your
20 Honor.

21 THE COURT: Can you pull up what you showed as 2785.
22 That's different from what they have showed as 2785
23 and I think what they showed is correct.

24 MR. HAVELES: This is the one they gave us that we
25 loaded into our system that was marked --

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Summation - Mr. Beus

1 THE COURT: What's different about it, Mr. Haveles?

2 MR. HAVELES: I am --

3 THE COURT: Look at top box on the right.

4 MR. PARK: Are we looking -- he also used the EBITDA
5 version.

6 THE COURT: I'm talking about 2785. There is a reason
7 we put numbers on exhibits.

8 Why don't you pull up, Bart, what you show at 2785. I
9 don't think it's a big deal. It's just different and there was
10 no objection. I just want to make sure that the record is
11 clear on what 2785 is and that's what goes back to the jury and
12 there is just no doubt about it. But I'm pretty sure what we
13 are about to see, which is what says 2003 --

14 MR. PARK: They have EBITDA for 2785. That's the
15 difference.

16 THE COURT: I'm talking about 2785. That says 2785.

17 MR. PARK: We got 2785, Judge, with the cash
18 equivalent.

19 THE COURT: There is a 2785. What is it? That is not
20 it, correct?

21 MR. HAVELES: Your Honor, I believe what's happened
22 here -- I am not sure what's happened here. I know the two
23 that we have loaded into the system that we have been doing
24 with the copies that we were given during the course of trial,
25 785 and 86, this is 786, in our system we have this marked as

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Summation - Mr. Beus

1 86.

2 THE COURT: I know that this is correct because you
3 objected to this document not having the 2003 note in it. But
4 the one that you showed didn't have 2003.

5 MR. HAVELES: Right.

6 THE COURT: This is, I believe, and what I'm pointing
7 to, is -- let me finish -- what plaintiff showed during their
8 closing as 2785. I believe that's 2785. I believe what you
9 showed during your closing at 2785 is not a document in
10 evidence.

11 MR. HAVELES: Your Honor.

12 THE COURT: I just want a clear record.

13 MR. HAVELES: Your Honor, without being fresh, we are
14 both right because you've picked up the notice there. What
15 also we have picked up and we were focusing on, what we were
16 distracted from is this 2785 is the green box, has EBITDA. The
17 copy that we have is the green box that we were given and we
18 were using because it was the copy given to us before trial
19 that had cash and cash equivalents. There are two differences
20 there. I was focusing on the green box. They are both
21 different.

22 THE COURT: Let me ask the plaintiff a question. This
23 document that's on the screen, which is what you showed during
24 your closing, which is marked 2785 as an exhibit from trial, is
25 that what I admitted as 2785?

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Summation - Mr. Beus

1 MR. S. STIRLING: Yes, your Honor, we believe this is
2 what was admitted after whatever objections or other things we
3 have gone through about prior versions of the exhibits had been
4 resolved. This is what was admitted.

5 MR. HAVELES: There are two bar graphs like this, your
6 Honor, 85 and 86.

7 THE COURT: That, I believe, is what defendants showed
8 as 2786 during their closing.

9 MR. HAVELES: We had that shown as 85. And I think
10 part of the confusion is, the copies that we have in our
11 systems were the copies that have been given to us and
12 somehow -- because we didn't create these documents. Both are
13 in the folder. The correct ones are in the folder for the
14 jury. That we do know.

15 THE COURT: Pull them out and let me see.

16 MR. HAVELES: But the ones that were in our computer
17 system are the copies of what had been given to us earlier and
18 that's where the confusion comes from, and I apologize, your
19 Honor.

20 THE COURT: 2785 and 2786 are in evidence. My memory
21 from trial is that they both, one had EBITDA on the left, one
22 had cash and cash equivalents on the left. Both of them,
23 because of defendants' objection, contained in the upper box
24 2003.

25 MR. HAVELES: Absolutely, your Honor. That one I

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Summation - Mr. Beus

1 agree. Now we are just trying to make sure --

2 THE COURT: What is in the folder that was just handed
3 to me, which is marked as 2785, does not have 2003 in the box.

4 MR. HAVELES: Those documents were not prepared by us.
5 They were prepared by plaintiffs. I think we got some
6 confusion on all the exhibits here and we will have to fix
7 those, too.

8 THE COURT: Sort it out. When I come back in five you
9 will let me know what the resolution is. What matters is a
10 clarity of record in case anybody is unhappy with the result
11 here and they want to take it to the circuit. You are
12 responsible for your exhibits, which is why it's important for
13 me to get agreement on what the exhibits are. And my job, part
14 is to make sure there is a clear record. Of course, what goes
15 back to the jury will only be what I actually admitted into
16 evidence. Take a look, talk with each other, and let me know
17 where we are. I'll return in five.

18 (Recess)

19 THE COURT: Mr. Haveles.

20 MR. HAVELES: I was going to say it appears, your
21 Honor, in the folders that pick up after all the things that
22 were done, when the parties after trial will exchange exhibits
23 like this, both sides seem to have the earlier version or
24 iteration in their folders as having been the ones marked in
25 evidence as opposed to the final version that was just put up

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Summation - Mr. Beus

1 on the screen.

2 So what we need to do is, for the purpose of sending
3 things out to the jury tomorrow, is get the correct versions
4 tonight and put them in the folder. I am not sure how it
5 happened or why. Both sides just kind of didn't pay attention
6 to it when we were exchanging exhibits each night about
7 newly-created exhibits that were based on demonstratives and
8 for that I'll take responsibility and apologize, your Honor.

9 THE COURT: Mr. Stirling.

10 MR. S. STIRLING: Your Honor, I believe, after the
11 review that we have done here, that what is correct is the
12 EBITDA slide should be 2785 and what is in the box does not
13 have the year 2003 on it, that it should be added, and 2786
14 should be the cash and cash equivalents slide and that should
15 also have the 2003 added to it. That I believe is what was
16 finally approved with those numbers.

17 MR. HAVELES: Somehow in each side's folders, because
18 it was in both sets we looked at, it was the inverse and it was
19 the earlier iteration, your Honor. We will correct that this
20 evening, your Honor.

21 THE COURT: Anything else before we bring in the jury?

22 MR. HAVELES: No, your Honor.

23 MR. S. STIRLING: Nothing.

24 (Jury present)

25 THE COURT: Thank you, members of the jury.

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Summation - Mr. Beus

1 Mr. Beus, you may proceed.

2 MR. BEUS: I have used the word seven and I should
3 have used the word several. And so when I said seven before, I
4 should have said several. The timeline is --

5 THE COURT: Just to be clear, Mr. Beus is referring to
6 when he said that Mr. Park said it took seven years to develop
7 the cell technology. As you may recall, when Mr. Park was
8 closing, he said several years to develop the cell technology.
9 Mr. Beus misheard him as saying seven and he has referred to
10 that and we are just correcting that.

11 MR. BEUS: That's what happens when you get old. I'm
12 older than you think.

13 Put up 387 for me, please.

14 I am going to change subjects now. I am going to talk
15 about some other principles of a valuation. I am back to Mr.
16 Grabowski. And this is really an important methodology that
17 I'm sure you already all understand. But I want to go over it.

18 Do you agree that the reliability of the market
19 approach is dependent on the relative comparability of the
20 guideline companies to the subject company that is being
21 valued?

22 "A. Yes."

23 You remember the debate about guideline versus
24 comparable. We just went directly to the guideline companies
25 in this question, so we got a common denominator that they need

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Summation - Mr. Beus

1 to be comparable. He said yes.

2 And do you agree with this, that the ideal guideline
3 companies are in the same industry as the subject company?

4 "A. That's the ideal guideline company."

5 644. And if you'll remember, Mr. Haveles spent a lot
6 of time describing Alcoa as a guideline company. And it is
7 just back like to do the houses, if you can figure out Alcoa is
8 worth this on a per square foot basis, you apply it to MagCorp,
9 and you know what MagCorp is. Of course, it's not square
10 footage; it is the attributes of Alcoa, are they like the
11 attributes of MagCorp. Different size. You apply one here,
12 apply one there and you try to get that comparable. And Mr.
13 Grabowski said that. He said that Alcoa was a very good
14 guideline company.

15 674. And he said it was good enough -- similar enough
16 that you could draw multiples from it. You get down to the
17 square foot price. Look at these characteristics. You come up
18 to a common matrix number. Then you apply it to MagCorp,
19 MagCorp's EBITDA, MagCorp's earnings, whatever you apply it to.

20 392. This is an important piece. Do we agree now
21 that MagCorp is riskier than Alcoa, yes or no?

22 "A. Its equity is more risky than Alcoa.

23 "Q. Is MagCorp's debt more risky as well than Alcoa's is?"

24 Look at what he said. I don't know. I don't know the
25 rating that Alcoa has, so I'd have to look at that.

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Summation - Mr. Beus

1 Why would you look at a rating? The better the
2 rating, the better your credit score if you go to buy a car,
3 the less interest you are going to pay. It's real simple. If
4 you've got a good credit rating you are going to pay less money
5 in interest. We have gone through a recession on subprime
6 mortgages, by having them not rated. Rating is everything when
7 it comes to evaluating risk. He says: I don't know the rating
8 that Alcoa has, so I'd have to look at that. Then I ask him,
9 678: Did you put in your report anywhere where the rating was
10 of Alcoa compared to MagCorp?

11 "A. It's in the source documents. I don't recall that we put
12 it into the report."

13 Now, Alcoa was the poster child that you saw Mr.
14 Haveles take Mr. Grabowski through.

15 672. Did you look at the terms of the debt with the
16 comps, the comparable companies?

17 "A. We looked at all the filings for the guideline companies."

18 Then I asked: Tell me what the cost of debt was. How
19 much interest are you paying? How much risk do you have is
20 what I'm asking here. Tell me what the cost of debt was of the
21 one that you and Mr. Haveles spent so much time about with
22 Alcoa. What was their cost of debt in the 1996? I don't
23 recall.

24 858. This comes right out of the exhibits that were
25 in Mr. Grabowski's report. If you take a note you can go back

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Summation - Mr. Beus

1 and find this and you take a note you can see the page numbers.
2 The bond rating for MagCorp is B, which is not investment
3 grade, and Mr. Grabowski told us that. What's the bond rating
4 for Alcoa? Investment grade. Then you look to see what's
5 really the risk. And the risk there tells you exactly the
6 relationship between MagCorp and Alcoa. You add those
7 together, we have those numbers and you add these together to
8 calculate the average rate. And you can see the relationship
9 between the risk of Alcoa and the risk of MagCorp. The
10 arithmetic is 2.22 times greater risk for MagCorp, simple
11 arithmetic.

12 679. So you looked. I won't take you through them.
13 But the Alcoa numbers, which was the example that you and Mr.
14 Haveles took us through, shows the average cost of December,
15 less than half of the cost of debt for MagCorp. Can we agree
16 on that? I will accept your assumption, your supposition.

17 638. What does cost of capital have to do with
18 valuation? And Mr. Grabowski: There are two major components
19 in a valuation. There is the profits that you are trying to
20 determine how much you are willing to pay for and the cost of
21 capital. It's one of those terms that make it hard for people
22 to know what we do. It's the rate of return that's appropriate
23 for the risk of the potential investment.

24 This is not all that complicated. You evaluate the
25 risk and the marketplace does that. They rate them. If the

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Summation - Mr. Beus

1 market wants them, the price goes up and the rating gets
2 better. If the market doesn't want them, the price goes down
3 and the rating goes down. Even the United States Government's
4 debt rating has gone down in the last few years, big news.
5 That's all they are doing is evaluating risk.

6 684. So what you do is, you take the guideline
7 companies, come up with the multiple and then apply it to
8 MagCorp, right? He says right.

9 854. I'm sorry. I should have said 858. I
10 apologize.

11 We are back to the same thing. So whatever rate that
12 the risk market says you have for Alcoa, you have to do what?
13 You have to multiply 2.22 times that number. Then I asked this
14 question, 677: Those numbers are not anywhere in your report
15 or your appendix? No. Thank you. They are in the report.
16 Then I say: You didn't do a chart up here that you could show
17 anywhere in your report to say, we think MagCorp is comparable
18 to Alcoa, did you, as it relates to debt? His answer was no.
19 He also made an assumption that a major part of this capital
20 structure is going to be debt. So it's really, really
21 important.

22 391. I asked the next question: You didn't do any
23 arithmetic to make a conclusion that MagCorp and Alcoa are
24 comparable, are relatively comparable to one another as it
25 relates to the cost of debt. Am I correct? And he says no.

F2OMBUC6

Summation - Mr. Beus

1 He didn't do that.

2 Now think about that. So I asked some more questions.

3 645. Were they, in fact, diversified companies?

4 Because you all know that if you have a company that is in a
5 whole bunch of different businesses, when one business goes
6 down, the other businesses can buoy them up. They say they
7 want what we call vertically diversified. They weren't into
8 different countervailing businesses where one would offset
9 another. They were all making aluminum products, for example.
10 Vertical diversification means that you manufacture and sell
11 and go to the retail market and do that.

12 806. Let me show you what the facts are. This is
13 Alcoa. This is out of the 10-K that was in Mr. Grabowski's
14 files. Look at diversification packaging, transportation,
15 distributor, aluminum and chemicals, building and construction.

16 805. This is an interesting fact. Alcoa Closures
17 Systems International, Inc. is the world's largest producer of
18 plastic closures for beverage containers. Is this starting to
19 not feel that they are the same, not very comparable?

20 804. And they are in the vinyl business, vinyl
21 windows and patio and door markets. This is right out of their
22 documents from Mr. Grabowski's file.

23 734. Then we pull this out of their file and this --
24 you can find this in these two exhibits, one is MagCorp's and
25 one is Alcoa's. Look at the difference. Stockholder's equity.

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Summation - Mr. Beus

1 MagCorp, negative \$69 million, negative, in the hole.

2 Positive, Alcoa, \$4.5 billion. Do they feel like comparables?

3 It's kind of funny, isn't it.

4 Net income, sales, cash, EBITDA, cost of debt. Look
5 at those numbers, 735. Here you see again, one plant, one
6 location, 76,800 employees. Does it feel like you are
7 comparing a mansion versus a shack? You see these comparables.

8 670. What's the cost of equity. The cost of equity
9 is always more than the cost of debt, right? Yes, it is.

10 When you see the amplification and the differences
11 between debt, it's even greater with equity.

12 403, I asked this question. What about Alcoa, did
13 they ever have a technology challenge that if they couldn't
14 solve it, they wouldn't survive? No.

15 Could you put up 392.

16 Then I ask kind of the ultimate question: Do you
17 agree now that MagCorp is riskier than Alcoa, yes or no?

18 "A. Its equity is more risky than Alcoa because it has more
19 leverage."

20 Is MagCorp's debt more risky as well than Alcoa's
21 debts? He didn't know. He has to look at the ratings. We
22 just did the arithmetic.

23 Put up 858 again. When you do that arithmetic, you
24 know it's 2.2 times greater.

25 Put up 857 for me. So the comparable they used to get

F2OMBUC6

Summation - Mr. Beus

1 to the cost of debt and the cost of equity and to put in the
2 income approach comes from, say, MagCorp and Alcoa are
3 comparable.

4 We now know, just looking at the simple data that's in
5 the records that you are going to see in the jury room, when
6 you deliberate, they are not even close to the same. Alcoa is
7 a multibillion dollar company. Alcoa has been around, I should
8 have put that up there, since 1888, 1888; MagCorp, 1989.
9 Recessions, if you're well capitalized, you get through a
10 recession. If you have a recession like 2009, it may be tough.
11 But the companies that are supposed to be of the Alcoa types,
12 they just walk through recessions. What happened to MagCorp
13 when they had a recession and a little competition? They
14 called that the perfect storm and they are done.

15 What's the difference between Alcoa and MagCorp? It's
16 huge. And nobody is in there looting Alcoa.

17 MR. HAVELES: Objection.

18 THE COURT: Sustained. The jury will disregard the
19 last comment.

20 MR. BEUS: Here is the income approach, future EBITDA
21 based on projections, and we are going to talk about those in a
22 minute. Times the discount rate, which is the guideline
23 company.

24 Now, you remember the number that Mr. Grabowski used
25 as the multiple, the discount rate. It was 10. Do you

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Summation - Mr. Beus

1 remember the number Jason Frank used? 22 and 23. 2.22 times
2 10 is exactly Jason Frank's number, exactly his number. And
3 what do you come up with? Major insolvency. What did Mr.
4 Grabowski do?

5 MR. HAVELES: Objection.

6 THE COURT: Sustained. The jury will disregard.

7 MR. BEUS: Put up 668 for me again.

8 When you are trying to value a company you say I've
9 got two pieces in a simple algebraic equation. The first piece
10 is, you have projected forecasted revenues on an income bases,
11 right? Yes. Then you take that income and you bring it back
12 to present value using a discount, right? Yes. That's how
13 it's done.

14 I've just taken through how noncomparable Alcoa is to
15 MagCorp. I could take you through -- the numbers would be
16 slightly different -- all of the seven guideline companies.
17 You'd come up with a result when you made the appropriate
18 adjustments and you would get to Jason Frank's number.

19 MR. HAVELES: Objection.

20 THE COURT: Sustained. The jury will disregard.

21 MR. BEUS: 736.

22 Let's look at projections, one of the pieces you have
23 there. You didn't give forecasts going earlier than the fiscal
24 year 1995 in the work you did. This is to Mr. Grabowski. We
25 looked at the plans that had been put together in the normal

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Summation - Mr. Beus

1 course of business in fiscal years earlier than '95. And there
2 were no fiscal years prior to 1995 that went back more than one
3 year? I believe that's correct.

4 So on one year's projections they are going to go out
5 seven years.

6 694. Let me ask you, do you agree with this: The
7 forecast for magnesium prices is the key assumption for
8 MagCorp's financial forecast? He says yes.

9 693. Did you ever ask Mr. Kaplan what the forecasts
10 were over the next seven years? Remember Mr. Kaplan. He is
11 the forecast guy. He is the guy Mr. Park told you that did the
12 IMA reports. That's the guy you would go to if you are going
13 to get the information and put it out.

14 Where did Mr. Frank get his forecast? He went to CRU,
15 an independent forecasting company that did magnesium prices.
16 And did he even go back to Mr. Kaplan and ask? He said no.

17 651. What's his testimony? His testimony, you have
18 to have a good idea that the projections are reasonable. He
19 didn't even get the projections from management.

20 652, he says they cannot be biased.

21 Then I ask him this, 650: By the way, if they are
22 bias, you have to go do something else? 650. What data did
23 you use for the expected profits? You look at projections.
24 Remember this is simple algebraic equation. You have to assess
25 the projections. You are looking at projections of profit and

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Summation - Mr. Beus

1 you are looking at projections of investment that has to be
2 made to keep the business going.

3 406. Then I ask him: You never got management to say
4 the price of magnesium is going to be this amount in '97, 98,
5 '99, 2000, other than in the July time frame? I don't remember
6 how the information was transmitted. But if we didn't, we
7 could easily calculate it, just like Mr. Edgar did.

8 You remember him saying he got his information from
9 Mr. Edgar. He didn't do it.

10 Put up 406. I'm sorry. 466. This is a question of
11 Mr. Edgar by my partner, Mr. Stirling: Mr. Edgar, all three of
12 the plan financial statement documents that you referred to in
13 your report as incorporating average price forecasts that you
14 provided to Mr. Grabowski are, in fact, derived from documents
15 that you do not include the price figures that you have
16 included in your report?

17 "A. That's correct."

18 Where are we? We have got Mr. Grabowski not getting
19 them from Mr. Kaplan, but he is using these projections to come
20 out to his number. Can you even imagine anybody paying the
21 kind of number that Mr. Grabowski says his company is worth.

22 Then what does he do? He says I get them from Edgar.
23 Mr. Edgar says he never gave him those numbers. Who knows what
24 he really has done.

25 98. Ira Rennert. How far can you predict prices?

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Summation - Mr. Beus

1 You can't, at all?

2 "A. No."

3 Was that your view in '95 through 2001?

4 That's one of the questions that he answered correctly
5 in his deposition and didn't change at trial. And he changed a
6 lot.

7 132. Mr. Legge, the president, had been there for
8 many years. These projections, if you go beyond a year, would
9 be very uncertain, right? I don't know that I would use the
10 word very uncertain. Uncertain? They would be uncertain.

11 133. This is, again, Mr. Legge. Have you ever in
12 your entire history projected out other than three years?

13 "A. Except for this occasion in 1996? Yes. Except for that,
14 no."

15 So this is the first time in your whole career, if I'm
16 correct, you have ever projected more than three years. He
17 says, yes, as I recall.

18 Then Mr. Stirling asked a lot of questions of
19 Mr. Edgar.

20 Put up 699. That's the first question there at the
21 top of that page. You'll recognize the other document and what
22 we have just done is added the imputed number for the MagCorp
23 price that would have to be obtained on the spot market.

24 "Q. And at the time that forecast was made for the prior three
25 years, MagCorp was getting 90 percent of the spot price,

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Summation - Mr. Beus

1 correct?

2 "A. Relative to the forecast, yes."

3 So what have you got here? Mr. Grabowski, who comes
4 in and tries to give you a number, with his key projections
5 number, doesn't even know where he got it or where it comes
6 from. And he mixes it up between spot price and what MagCorp
7 actually gets. And if you look at the green line, and you put
8 it in juxtaposition to the spot price line, you can see why
9 that is generally about 90 percent.

10 Do you remember all the questions I asked and do you
11 remember the questions Mr. Stirling asked Mr. Edgar? Did you
12 ever get a price for magnesium, how much a pound? No. How did
13 they derive it? Do you remember those sheets where they said,
14 we will assume 43,500 pounds? I'm sorry, tons. And then do
15 you remember the questions. Where did you figure out the
16 price? And you got some machination, you can never figure that
17 out again because, why? They took the revenues that included
18 the revenues from chlorine, hydrochloric acid, ferric chloride
19 and ferrous chloride. They didn't even know what they were.
20 Mr. Edgar could not give those answers and neither could Mr.
21 Grabowski.

22 463. You see we ask about where did that come from?
23 It's not mentioned in the documents.

24 692. What other products? I don't know. I don't
25 remember. I would have to go look.

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Summation - Mr. Beus

1 462. MagCorp didn't list the prices. Here it's \$1.62
2 or \$1.61. Remember the document, 559. It takes a \$1.60 to
3 survive.

4 Ladies and gentlemen, Jason Frank was short and you
5 know why now. He was clear and unequivocal. He had an exact
6 solid source from a professional forecaster in the magnesium
7 world. When Mr. Adams was cross-examined and you saw the
8 video, they didn't touch him on that issue. They didn't lay a
9 glove on him. They didn't lay a glove on Mr. Frank. And when
10 it came to the cost numbers, he took the exact cost numbers out
11 of the financial information. You may not like that he's
12 younger than Mr. Grabowski, but maybe you do. Very smart man,
13 an MBA from the University of Chicago, been in the business for
14 a long time, is the head person at one of the largest valuation
15 companies in the country.

16 (Continued on next page)

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Summation - Mr. Beus

1 MR. BEUS: Now, let's move to pricing for just a
2 minute. 849. I will try to do this quickly. In the early
3 '90s, MagCorp had seen prices plummet. Let me take you through
4 some of the details so you can see the documents.

5 775, please. This document right here you probably
6 haven't seen before. It is in evidence. This is Marjorie
7 Bowen's notes of her conversations with Mr. Kaplan. Market
8 flooded with magnesium in the early '90s. Canadian, MagCorp
9 price war, \$1.11 low. And remember the \$1.60 survival number?
10 If you have seen the cycle before, you're likely to see it yet
11 again.

12 774. More notes. '92 to '94, huge quantities of
13 imports from Russia and China.

14 Could somebody say you cannot predict China?
15 Mr. Kaplan is telling her this or at least she is writing it
16 down.

17 950. I'm sorry. Go to 527. Now we're in April of
18 '96. This is Mr. Kaplan to Mr. Legge. "This is consistent
19 with reports that have been expanding of late indicating
20 significant additional production of Chinese material."

21 Bart, can you blow up the data on that, or can you say
22 it for me? 8 April '96. This is April '96 before the
23 \$75 million dividend was taken. It also indicates that some of
24 the traditional European Russian sales have been replaced by
25 poorer quality, lower priced Chinese material. Look at what

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Summation - Mr. Beus

1 the next sentence says. That forces an apparent more Russian
2 material to the other Western markets. So when China comes to
3 Europe or Rotterdam, which you heard about by Mr. Park, what
4 that does is that causes the Russian magnesium to go into North
5 America. This is a worldwide industry.

6 Next, please. 526. This is April of '96, again
7 before the \$75 million taking.

8 530. Magnesium consumption by the West of Eastern
9 material increased in the first quarter to 17,400 tons. Here
10 you see Chinese material continues to be sold at extremely low
11 prices, as shown in the attached press clipping. This is from
12 Mr. Kaplan to Mr. Legge.

13 Now let me show you -- there it is. That is
14 Rotterdam. It doesn't say it on there, but I will tell that it
15 is referring to Rotterdam. \$1.13. That is creating pressure.

16 757. I'm sorry. 787. This is back to Marjorie
17 Bowen's notes before the note offering. Here is what she is
18 told: Two big risks. Ask yourself: Was this predictable?
19 Supply from China and economy tanking.

20 Where did she get that information? These notes come
21 from conversations with Mr. Kaplan. Did they plug these into
22 projections? If you know those are the two big risks and you
23 have a company, what do you do? You put adequate capital in
24 place to fight the competition and get to -- to use
25 Mr. Grabowski's phrase -- to the end of the day. That's what

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Summation - Mr. Beus

1 you have to do.

2 950. This comes from United States Geologic, USGS, a
3 government document. '92, you see 11,800 tons, imports; 96,
4 you see a 400 percent increase to 46,600. This is all, again,
5 before that big \$75 million dividend. Mr. Rennert, as the
6 chairman of the board of MagCorp and as the chairman of the
7 board of Renco Metals, had a duty to keep this company
8 adequately capitalized. He had a fiduciary duty to do that.

9 Mr. Edgar, 441. This is Mr. Edgar describing these
10 good years. Prices are relatively stable. You have two
11 exceptional years, and you've got six other what you call
12 normal years. Exceptional years are '95 and '96.

13 What numbers did they use to do all of their
14 projections, Mr. Grabowski, Houlihan Lokey? They took one
15 number, 1996, \$1.78 in these two exceptional years.

16 Well, let us not misunderstand. Somebody who
17 understands this in the time frame, knows what their
18 responsibilities are as a fiduciary, you don't take the money
19 out. And we're asking you to tell Mr. Rennert to put the money
20 back. And let it be used for the creditors in this case.

21 Let's go to technology for just a minute. 319,
22 Mr. Tripp. You recall when it was that you got the
23 understanding that in order to continue in business, there
24 would need to be improved technology?

25 I don't recall the date, but it was the early 1990s.

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Summation - Mr. Beus

1 That's Mr. Tripp. He didn't want to say that, but he
2 had said it in his deposition, so it came out here. Early '90s
3 they knew they had to have improved technology.

4 993. Mr. Legge. In the depo, he said bleeding,
5 losing tons of money. At trial, he said, AMAX was investing a
6 lot of money in the facility, and we were not getting the
7 returns on the sales.

8 Bleeding and losing tons of money is pretty graphic.
9 That's the testimony he gave in his deposition. That's the
10 technology that was trying to operate. It was a problem.

11 146. We had searched the world to find something
12 else. We looked at every cell. Anybody that would sell a
13 cell, we looked at it.

14 Mr. Park suggested that there were other cells and
15 other ways to do this. That's not true. These folks had
16 searched the world.

17 230. Mr. Legge. Early in the '90s, did you believe
18 that the evolution of the M-cell was necessary to maintain the
19 competitive nature of MagCorp?

20 He does better. He says, early in the 1990s, I
21 believed that the evolution to a new cell was required,
22 whatever cell it was, and which would be the best available
23 technology.

24 356. Mr. Thayer, the now-president of U.S. Magnesium.
25 What were they using there? This testimony. They were using

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Summation - Mr. Beus

1 two cells, I.G. Farben and sealed cells. Modified I.G. cells,
2 they had some cooled cells that didn't last. They had been
3 trying to develop other electrolytic technology throughout that
4 time period, that is correct. How long had they been at it?
5 At least since 1989. When you get to 1995, they discover
6 Alcan. They go to Japan to see if it might work. They're
7 hopeful. But it doesn't work.

8 357. At the end of that period of time -- it is
9 important you get this time period -- October 1998, you still
10 didn't have any alternative to -- develop alternatives to
11 either the I.G. Farben cell or the sealed cell, isn't that
12 true?

13 We didn't have a commercial cell ready to replace
14 either of those two versions as of that date.

15 Now, let me tell you what they tell other folks. Put
16 up 822 for me, would you. This is in the '93 notes offering.
17 This is what they're telling investors and bondholders. "Due
18 to its high quality brine from the Great Salt Lake and a
19 state-of-the-art production process."

20 Any wonder why investors might be there?

21 And by the way, investors aren't here because they
22 asked a court to appoint a trustee. They petitioned the
23 Bankruptcy Court, and the judge decided to appoint --

24 MR. HAVELES: Objection.

25 THE COURT: Sustained. Counsel, keep comments to

f2o4bcu7 Summation - Mr. Beus

1 matters in evidence.

2 The jury will disregard.

3 MR. BEUS: A trustee was appointed by the Bankruptcy
4 Court.

5 220. This is Mr. Legge. Was there ever a time when
6 you thought you could solve the lithium chloride problem? You
7 remember the problem. That's with the Alcan cell.

8 We didn't know.

9 By the way, you remember me asking Mr. Grabowski, you
10 know what this problem was? He didn't know. Had no idea.

11 We didn't, no. We finally just gave up on Alcan and
12 said we've got to design our own M-cell technology to get
13 around the lithium chloride problem. That is correct.

14 Was that your testimony?

15 It was.

16 By the way, you heard Mr. Haveles in the opening say
17 the M-cell hit it out of the park, and you heard Mr. Park say
18 how wonderful it is, first class, best in show or whatever the
19 words were.

20 Put up 550. Let's take a look and see how they have
21 done with the M-cells. They still don't have this problem
22 solved, or at least as of 2002, they haven't. There you see a
23 very short period in 2002 where they lost \$3.8 million. And in
24 2003, they lost \$19 million. That's with the M-cell, and they
25 had the iron stripper with it. They were still losing huge

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Summation - Mr. Beus

1 amounts of money.

2 1008, please. The timing of this document is valuable
3 because you're now in October of 1995. This is from Mr. Legge
4 to Mr. Rennert. "The Alcan cell has not been proven as a
5 commercial electrolytic cell for primary magnesium production,
6 and that burden will fall on MagCorp and Alcan jointly."

7 This isn't something you could just go buy off the
8 shelf.

9 The Alcan cell has certain deficiencies in an
10 application with a primary magnesium producer (i.e. metal
11 purity, cell life, cost of rebuilt, etc.,) which Alcan doesn't
12 yet fully recognize. Then, it says, the cell is larger and
13 thus more costly than MagCorp had anticipated.

14 That's in October of '95. We all know what
15 Mr. Grabowski was told. It will work. And it didn't.

16 Put up 567 for me, please. You have all seen this,
17 this is Exhibit 2562. This is the capital budget program. You
18 saw numbers by Mr. Park about how much they had been spending
19 on research and development. They had been. They had been
20 spending money on research and development because they were
21 looking for something that would keep them alive, to make them
22 competitive, to continue in business. You see those numbers?
23 They didn't spend those numbers. When you take their charts
24 into the jury room, look at what they actually spent and put it
25 up against this document. They spent a small fraction of it.

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Summation - Mr. Beus

1 Had they not taken the dividends, they might have gotten to the
2 point where they could have survived. Who knows? They were
3 never adequately capitalized.

4 And there was never a time when their assets exceeded
5 their liabilities. Jason Frank made that perfectly clear.
6 Roger Grabowski, you clearly understand why he couldn't get
7 there.

8 568. That is the next page of it. It is a
9 two-page document. 152. I asked Mr. Legge: Is the
10 \$78.4 million a combination of page 1 and page 2? Correct?

11 He says yes.

12 You've seen this before, but when you're dealing with
13 capital expenditures, if you'll remember in the offering
14 memorandum in '96, they talked about \$46 million was going to
15 be put in to make it better and better. Their intent was to do
16 that with Alcan. The problem was they didn't spend it because
17 Alcan didn't work. They did exactly what they should have
18 done. They put a pilot cell in. They worked at it. It takes
19 seven, eight, nine, ten months to get a pilot cell in, find out
20 that it doesn't work. When it didn't work, they tried it
21 again. It still didn't work. Then, they tried a third one,
22 and then they said we better start working on something else,
23 and then they started working on the M-cell, and the bankruptcy
24 hit before they got the M-cell going. Even after they got some
25 M-cell going, they still lost money with it.

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Summation - Mr. Beus

1 949. Here is the document on September 30, '98. You
2 see number 4? Here is what I want to show you. Reminding you
3 of this document. Remember this is in the narrow, blindfolded
4 time frame that Mr. Grabowski was willing to look at. His
5 cutoff date is 31 October '98. This is 30 September '98. Look
6 at what he says. 757. He didn't recall it.

7 293. M-cell, May 2001. That's also a stipulated
8 fact, which you'll have when you get into the jury room.
9 That's three months later, is the bankruptcy.

10 213. Why did they go into bankruptcy? Mr. Legge
11 gives us testimony. Why did you file bankruptcy? Our cash
12 flow was in excess of our earnings. Didn't have any more
13 money, couldn't stabilize the business. Running out of
14 funding.

15 352. Well, let me show you Mr. Haveles' statement in
16 opening statement. 1064, please. This is what you were
17 promised.

18 MR. HAVELES: Objection.

19 MR. BEUS: Here's the language.

20 THE COURT: Just a second.

21 Overruled.

22 MR. BEUS: 1064. This is what Mr. Haveles said in his
23 opening argument. "Never once did the company get denied a
24 dime for the technology that it needed or wanted to do."

25 That's what you were told you would hear the evidence

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Summation - Mr. Beus

1 to be.

2 "And you won't hear a single witness, see a single
3 document that says they were denied money and they were not
4 allowed to proceed with a project."

5 352. We're reading here from a document, Exhibit
6 2112, which is in evidence. At that time, you wrote -- this is
7 paragraph 4 -- the Renco Corporate Group does not wish to
8 engage in economic support of the technology upgrade program?

9 Yes.

10 Was that true when it was written?

11 Yes.

12 And at that point in April of 2000, you had already
13 been operating pilot M-cells since December of 1998; correct?

14 Yes.

15 167, referring to this document. Isn't this, in fact,
16 a summary of the future business plan options that the group
17 had in December of 1999?

18 Answer: Yes.

19 Let me switch subjects. Let me switch to technology
20 before my time runs out. 569. November 9, 1996. You've heard
21 a lot about the Bevill exemption. Let me first make it very
22 clear. There's two laws that we're dealing with: RCRA and
23 CERCLA. CERCLA puts you in a superfund site with remediation
24 obligations. It does not have daily penalties associated with
25 it. It has remediation costs. RCRA, on the other hand, deals

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Summation - Mr. Beus

1 with how waste is permitted to be held, distributed, or taken
2 care of. It has serious penalties, and it has a number of
3 other things. It has a duty for the company to tell the EPA
4 whether there's hazardous wastes on these sites or not.

5 That didn't happen. You remember John Veranth
6 testifying, Dr. Veranth?

7 So what you have heard in this case, and you've heard
8 it from Mr. Grabowski, the notice of violation was done by the
9 state of Utah that was settled for \$2,500. The hope was that
10 they would have a determination of Bevill, of the Bevill
11 exemption on that.

12 Let me show you what the documents actually say. 569.
13 This is really easy to understand. This is from Mr. Bassani to
14 Mr. Thayer, with a copy to Mr. Tripp. "Solid and hazardous"
15 -- and this is November 9, 1997 before this is settled. It's
16 during the negotiations. "\$2,500 was agreed to be acceptable
17 to settle the NOV in total. Language for clarifying the
18 regulatory status of our waste streams will not be incorporated
19 into the settlement agreement."

20 Clear and unequivocal. You'll have the settlement
21 itself. You can read it. You'll come to understand it.

22 Put up 539. Remember Mr. Haveles in the opening?
23 Well, let me show you what Mr. Haveles says in the opening.

24 1072. Here is what he told you: "And there things
25 stood until the EPA changes its mind, and it did change its

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Summation - Mr. Beus

1 mind. Sometime in the late 1990s and the 2000 time period, it
2 decided it didn't like the Bevill Amendment that much, so they
3 changed the interpretation, and they filed suit in 2001."

4 Let's look at Exhibit 2089, Powerpoint 539.

5 1999. This is from Mr. Thayer to Mr. Legge.

6 "Jacobson was accompanied by several additional EPA personnel,
7 as well as two state solid and hazardous waste regulators.
8 Steve Hoffman, from Central EPA, apparently visited to discuss
9 the Bevill status of the pond and reiterated the regulatory
10 position that our interpretation was incorrect. He stated that
11 the EPA would review the issue and again give us their
12 opinion."

13 Now, look at the last line. "This is a disagreement
14 that has been ongoing for 20 years and additional confrontation
15 appears likely."

16 There was additional confrontation. Predictable?
17 Sure. 20-year dispute. Sure. It's predictable.

18 247. Then the question is asked of Mr. Legge: Has
19 there been an ongoing dispute about this position?

20 He says it is.

21 324. Let's go to the '94, '95 time frame. Not
22 something that happened as part of the perfect storm. 324.
23 Quoting Exhibit 2608, and below that, the paragraph following
24 says, "Additionally, this exemption applies only to those waste
25 streams as generated, which means at the point at which they

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Summation - Mr. Beus

1 are produced from the processing of the ore or mineral."

2 Do you see that sentence in the 1994, 1995 time
3 period.

4 325. He says he does. Okay? So they knew what the
5 problem was in the '94 and '95 time frame.

6 So when they did the projections, they knew there was
7 an issue. It was wasn't 1999 or 2000 when the EPA changed its
8 mind.

9 325. Following that, it went on to say: As applied
10 to MagCorp, this means that the exempt wastewaters are
11 generated from the scrubbers, and the exemption may be
12 jeopardized if non-exempt wastes are commingled with the
13 wastewaters.

14 You are aware of that being EPA's position?

15 Answer: Yes.

16 That's the, '94, '95 time frame.

17 321. It goes on to say, "These are the only two waste
18 streams at MagCorp which are eligible for the mineral
19 processing waste exclusion? Do you see that sentence?

20 Answer: That is what is written there.

21 Did you read it when you received their memorandum in
22 1993?

23 Yes, I did.

24 It goes back even further.

25 322. You understood that the exclusion applied only

f2o4bcu7 Summation - Mr. Beus

1 to aqueous waste streams, wastewaters; correct?

2 He said yes.

3 And you understood that it only would apply to wastes,
4 quote, directly associated, closed quote, with mineral
5 processing? Is that your understanding?

6 Answer: Yes.

7 326. Let me just ask you the plain English
8 definition. The anode dust, when it comes out of the
9 electrolytic cell into the anode header, is a dry dust, is that
10 right?

11 Answer: Yes.

12 Clear admission that Bevill exemption does not apply
13 to anode dust. When you heard Dr. Veranth take you through the
14 models -- if I had time, I would bring the models back up here
15 -- remember the anode header, the anode dust, chlorinated
16 hydrocarbons. The M-cell today creates chlorinated
17 hydrocarbons. That was his testimony. That anode dust is not
18 exempt. It has never been exempt. It's not water. It's not
19 liquid. It's dust. Dr. Veranth explained to you how that
20 happened. I know it went fast. They take it out of the
21 header, and for awhile, they just washed it down and ran it in
22 the ditches. And when you go out there and you know birds are
23 dying and everything else is happening, you know why. Because
24 they have contaminated that entire area.

25 Let me show you one chart.

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Summation - Mr. Beus

1 THE COURT: While you're putting it up, I am going to
2 give the jury a five-minute break. Just five minutes. We will
3 come back, and we will be able to finish the closings for the
4 day.

5 Thank you.

6 (Continued on next page)

f2o4bcu7

Summation - Mr. Beus

(In open court; jury not present)

THE COURT: Anything else?

MR. HAVELES: Your Honor, notwithstanding your sustaining the objections, I'm concerned that three times Mr. Beus attempted to provide an explanation for Mr. Frank that he never gave during trial. The direction was just sustained, disregard it. It wasn't clear to the jury, I think, enough that Mr. Beus's attempt to substitute testimony that Mr. Frank gave should be disregarded. I would ask that you provide further clarification with respect to the sustaining of those three objections.

MR. BEUS: I have no idea what I said that Mr. Frank didn't testify about either on direct or cross. I have read it recently.

THE COURT: Well, in any event, I sustained the objection. It was made contemporaneously, as it should have been. I expressly told them to disregard, and I make every assumption that they'll follow my directions.

If it happens again, I can go further. As I sit here, it is not necessary.

MR. HAVELES: Thank you, your Honor.

THE COURT: Anything else?

MR. HAVELES: No, your Honor.

THE COURT: We will start in now four minutes. This is just a short break, as we're going to finish today.

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Summation - Mr. Beus

(Recess)

THE COURT: Anything?

(In open court; jury present)

THE COURT: Mr. Beus, you may proceed.

MR. BEUS: You'll see -- and I don't want to stand in your way, so I will just speak from here for just a minute -- a chart. This is a visual. The underlying document is in evidence, and all the numbers except for the arithmetic we've done on how many times over what is called the PRG, that is the recommended guideline number for the EPA as to how many dioxins, hexachlorobenzene. All of this is in evidence, and you'll be able to find that when you get to the exhibits.

Let me just give you an illustration of a few.

Can everybody see?

MR. HAVELES: May I, your Honor?

THE COURT: Yes.

MR. HAVELES: Thank you.

MR. BEUS: You see here in the wastewater ditches, these ditches down here -- I'm not trying to indicate that they are in any specific location, just in the ditches where they have tested. You'll see the EPA preliminary remediation goals. That's how many parts per billion. This is the maximum levels they found. So they are 5,666 times as great as what the limit should be. PCBs, 101 times the limit. HCBs, which is hexachlorobenzene, 1,909 times. Arsenic, 37 times. When you

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Summation - Mr. Beus

1 go around, you see multiples everywhere; active waste pond,
2 gypsum pile, sanitary lagoon, old waste pond.

3 Now, what Mr. Haveles told you in the very beginning
4 of this trial is that this is in desolate areas. This is not
5 all that desolate. Hill Brothers Chemicals is right next door
6 with over 200 employees. You heard testimony there were cattle
7 out there. You heard testimony where there were people who
8 went out there to hunt.

9 Now, you heard the suggestion from defendants'
10 experts, put up a sign. That's how they were going to do it.
11 Take a rock salt cover.

12 What happens when it rains? What happens if the Great
13 Salt Lake has another flood? What happens to that salt cap?
14 It is supposed to be there for millennia.

15 Back to the Bevill exemption. Just one thing I
16 missed. 983, if you would, please. So I'm really clear,
17 because I made this point, I will split it up a little. The
18 first reason there was never a Bevill exemption, the Bevill
19 exemption never applied to solid waste, anode dust. The second
20 thing, the Bevill exemption never applied to other processes.
21 Let me see if I can show you that.

22 The chemical manufacturing where they're creating
23 chlorine, there is no exemption for that.

24 984. Mr. Van Housman. You probably don't remember
25 this because it was read.

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Summation - Mr. Beus

1 Can you tell me what they are?

2 This is not covered under Bevill exemption. This is a
3 person from the --

4 MR. HAVELES: Objection.

5 THE COURT: Sustained. Counsel will restrain comments
6 to matters in evidence.

7 The jury will disregard the last comment.

8 MR. BEUS: May I have a side bar?

9 THE COURT: You may.

10 (Continued on next page)

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Summation - Mr. Beus

(At the sidebar)

MR. SCOT STIRLING: Your Honor, this is in evidence.

The evidence of Van Housman was that two waste streams, they had the cathode scrubbers and the Ducon scrubbers off the melt/reactor cells, those were exempt because they were mineral processing. This is an exemption for mineral processing by the anhydrous processes. He was asked about other scrubbers. He said: Is that from mineral processing? He said no. There are other scrubbers used there in chemical manufacturing operations. That is not mineral processing. That is the distinction. It is in the record.

He testified the chlorine reduction burner is not leased out. It is part of the chlorine manufacturing process. He testified the water wash column is not exempt. High-energy scrubber is not exempt. Those are part of the chlorine, chemical, and hydrochloric acid manufacturing processes. That is his testimony.

MR. HAVELES: That is not what Mr. Beus said.

Mr. Beus put up there a statement, a quotation from Mr. Housman. He made a naked assertion as an attorney, this is not covered by Bevill. Mr. Beus wants to talk about what Mr. Housman testified. He should say what Mr. Housman testified, not give his own conclusion about whether it is exempt from Bevill or not. That is the reason I objected.

MR. SCOT STIRLING: We don't have to --

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Summation - Mr. Beus

1 THE COURT: Just a second.

2 MR. BEUS: Chlorine production. It is about chlorine
3 production. It is not covered. That's his testimony, and that
4 is in the record.

5 THE COURT: Chlorine production --

6 MR. BEUS: It goes into the scrubbers. When the
7 chlorine is produced --

8 THE COURT: Which scrubbers does it go into?

9 MR. BEUS: Chlorine scrubbers.

10 MR. SCOT STIRLING: The scrubbers that are downstream
11 of the Ducon scrubber coming off the melt/reactor system,
12 beginning with the chlorine reduction burner, are part of the
13 chemical manufacturing operations that Mr. Van Housman was
14 testifying about. He said the two exempt wastes are the Ducon
15 scrubber coming off the melt/reactors and the cathode scrubber.
16 That's it.

17 MR. HAVELES: Then they should say it is Mr. Housman's
18 testimony.

19 THE COURT: Okay. I'm going to tell them I'm changing
20 my ruling on that. I'm overrule the objection. You can
21 proceed.

22 (Continued on next page)

23

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25

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Summation - Mr. Beus

(In open court; jury present)

THE COURT: Members of the jury, I am changing my ruling on that one. I'm overruling the objection. Mr. Beus did refer to testimony in evidence.

Mr. Beus, you may proceed.

MR. BEUS: Thank you, your Honor.

Would you put up 984 again. Let me see if I can summarize it. There are two types of wastes that have never been Bevill-exempt: Solid waste anode dust. That is where a lot of -- as you remember, Dr. Veranth, where he said, when the temperature goes up and it comes down, it goes through this temperature between 450 degrees or 700 degrees, that is where chlorinated hydrocarbons are created. Then, they go into the anode header. They come out as dust. If it is solid as opposed to a liquid, it has never been exempt. And Mr. Tripp admitted that, and you saw his testimony.

The second non-exempt waste is waste if you make it from chlorine or something other than mineral production. What I'm showing you here is when they manufacture chlorine that they sell that has no exemption, and this is Mr. Van Housman's testimony on that subject. He is talking about what is not exempt, and he says, "There is a chlorine production facility that employs a scrubber or a material that acts a scrubber called a wash column. There is a device called a high-energy scrubber."

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Summation - Mr. Beus

1 You may remember Dr. Veranth kind of took you through
2 this -- it is a lot of material -- that acts upon gases that
3 come from the chlorine reduction burner of proofer that acts as
4 a scrubber. A scrubber is a cleaning device. It is a way to
5 clean things up.

6 I don't want any misunderstanding. Anode dust,
7 manufacture of chlorine are nonmineral manufacturing, has never
8 been Bevill-exempt, ever. And Mr. Tripp, Mr. Legge, and others
9 have admitted that.

10 MR. HAVELES: Objection.

11 MR. BEUS: Put up 326.

12 THE COURT: Just a second.

13 Sustained.

14 MR. BEUS: Put up 326.

15 THE COURT: The jury will disregard the last statement
16 of Mr. Beus.

17 Go ahead.

18 MR. BEUS: Let me move on to some of the duties they
19 had. Put up 1082. This is Mr. Veranth. He says there is a
20 document called the Toxic Release Inventory that every major
21 chemical producer has to file -- it's a public document -- that
22 tabulates the releases of materials to the environment. I
23 examined the reports. They are available on the EPA website.
24 Anyone can download them. And the first time I found things
25 like hexachlorobenzene reported was in the year 2000, 2000 year

f2o4bcu7 Summation - Mr. Beus

1 report, I believe.

2 They had a duty to characterize.

3 Put up 320. Mr. Tripp. The first item there says
4 that a person who generates a solid waste must determine if
5 that waste is a hazardous waste. This is reading from the
6 statute.

7 Answer: That is what it says.

8 Question: Is that your understanding, that one of
9 your obligations of MagCorp during this time frame was to
10 determine whether the solid wastes that you were generating at
11 the facility were hazardous?

12 Correct.

13 Now, 584. This is in evidence. R315-3-1(A), the rule
14 states: No person shall own, construct, modify, or operate any
15 facility for the purpose of treating, storing, or disposing of
16 hazardous waste without first submitting and receiving the
17 approval of the executive secretary for a hazardous waste
18 operation plan for that facility.

19 315. MagCorp did not have a permit to dispose of
20 hazardous waste at the Rowley facility; did it?

21 Answer: We had no permit to dispose of hazardous
22 waste.

23 Let me make this real simple. You heard Mr. Park talk
24 about a probability analysis. MagCorp has been operating
25 there, according to Dr. Veranth, from '89 to 2000 without a

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Summation - Mr. Beus

1 permit, without discharging their duty to characterize that
2 waste and tell the regulatory agencies what that waste really
3 was.

4 Now, you do a probability analysis. If you have a
5 duty to report and you don't report, how happy, how willing do
6 you think the EPA may be to just close their eyes to it? You
7 analyze that for yourself. We know that 100 percent of this
8 site is contaminated. We know that contamination has been
9 going on for a very long period of time.

10 And you have seen it in this trial, you have heard the
11 words, vindictive EPA.

12 Mr. Rennert testified, when he decided to settle for
13 \$2,500, you know his phrase, it is just like paying a parking
14 ticket.

15 They never did what their duty required them to do.
16 They needed to go out and test and characterize. They knew it
17 was there. They waited to get caught. They didn't
18 investigate. They didn't study. They didn't report.

19 Probability of having a problem with that is very
20 close to a hundred percent. And they've got a problem. And
21 they have been litigating for over a decade. Mr. Rennert has
22 the notion, just put it off down the road. Put it off, put it
23 off, put it off, in capitalization.

24 MR. HAVELES: Objection.

25 THE COURT: Overruled.

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Summation - Mr. Beus

1 MR. BEUS: Put it off. Litigate. Do whatever you
2 have to do. Leave it for somebody else.

3 He took that \$118 million out. Left the creditors,
4 left the EPA, left the taxpayers to clean up this contaminated
5 mess.

6 MR. HAVELES: Objection.

7 THE COURT: Sustained.

8 The jury will disregard the last comment.

9 MR. BEUS: 986. Dr. Veranth, do you have an opinion
10 as to whether there were any material changes in the waste
11 processes system, waste generated through the processes at the
12 Rowley facility from the time that you were employed in the
13 1970s and 1980s through the 1990s?

14 Answer: In my report, I tabulated some specific
15 process changes that slightly increased or decreased flows, but
16 my overall conclusion was that the wastewater flow and the
17 production of chemical and chlorinated hydrocarbons has been
18 approximately constant, except for changes at the plant
19 production level.

20 372. Their expert, Mr. Powell. This is their expert.
21 And in preparing your report in this case, one of the things
22 that you concluded was that you could use this information in
23 this report prepared in 2003 for your report in this case
24 because the contaminants described here existed in prior
25 periods, in the 1990s and prior to that, correct?

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Summation - Mr. Beus

1 Yes. It was and remains my belief that the types of
2 contaminants they found in 2003 likely existed in the same
3 areas of the property back in 1998.

4 If you go to Exhibit 2792 when you deliberate and you
5 go to pages 16 through 19, you'll have it all laid out for you.
6 You'll also find that in Exhibits 2607 and 2681.

7 Let me go on with Mr. Powell. 373. And 1994 and
8 before that -- he got it back to '98.

9 Answer: I am not sure how far back you can go before
10 that, might be a problem, but certainly in that '95, '98 time
11 frame it would have been true.

12 That's their expert.

13 975. And the nature of the waste and the contaminants
14 in those wastes that were being generated also had not changed
15 from the 1990s to the 2000s, right?

16 That's right.

17 That contamination that you see on this board, and
18 when you see the documents, it's been there since the 1990s.

19 338. This is our expert, which I have mostly stayed
20 away from our experts because their experts basically concede
21 everything we need in this case. When Mr. Park said, have
22 Mr. Beus show you the evidence, you've seen a lot of evidence.
23 You've seen documents, you've seen their folks make one
24 admission after another.

25 338. Lastly, in connection with advising a party to a

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Summation - Mr. Beus

1 potential purchase of MagCorp's business in 1996, were there
2 any other potential environmental liabilities that you
3 considered?

4 Somebody has got to pay for this whole cleanup mess,
5 but there is a tack on in addition to that.

6 The other category that I considered and would have
7 advised the client on was the category of penalties or fines
8 for noncompliance with RCRA.

9 548, please. Here's an inspection report. It's in
10 evidence. January 12-13, 2001.

11 547. Here is what it says. You know this has been
12 there a long time. You just heard their expert. "The sample
13 shows that the waste generated from anode box number 4 is a
14 RCRA hazardous waste because it failed the toxic characteristic
15 leachate test.

16 The anode dust also contains -- by the way, when you
17 look at these documents, you'll see the attachments.

18 The anode dust also contains solid waste such as
19 hexachlorobenzene at levels which may pose a substantial risk
20 to human health and the environment.

21 Remember the document that you saw that dioxins and
22 furans are the most dangerous chemicals ever studied? That is
23 an internal MagCorp document in 1996.

24 Additionally, the analysis showed that the facility is
25 generating and disposing of PCBs in excess of the regulatory

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Summation - Mr. Beus

1 limit of 50 parts per million and is fully regulated under the
2 Toxic Substance Control Act. The sample analysis from the
3 central ditch and main ditch show that the facility has engaged
4 in illegal disposal of a RCRA hazardous waste, a TSCA PCB
5 waste, another solid waste for an extended period of time
6 creating a substantial risk to human health and the environment
7 at the facility.

8 Lastly, the analysis shows a different fingerprint or
9 a different species of dioxin at various locations at the
10 facility, strongly indicating that the anode header is not the
11 only source of dioxin at the facility.

12 (Continued on next page)

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Summation - Mr. Beus

1 MR. BEUS: 360, Mr. Van Housman. Can you summarize
2 for me what wastes from Rowley contained chlorinated
3 hydrocarbons? I believe every waste, with the possible
4 exception of the ferric ferrous chloride waste that is the
5 subject of our complaint, contains chlorinated hydrocarbons.

6 973. It's a Superfund site today. Mr. Rennert
7 testified that he thought they had appealed it and it hadn't
8 been final. You all know, because you've heard the testimony,
9 it is final. They lost that appeal.

10 811. This is a RCRA compliance report, February of
11 '03.

12 810. On January 16, 2001, the United States
13 Department of Justice filed suit against the Magnesium
14 Corporation of America.

15 MR. HAVELES: Objection. I withdraw the objection.
16 I'm sorry, your Honor. I looked at the wrong exhibit.

17 THE COURT: Go ahead.

18 MR. BEUS: Would you put up 810 again.

19 On January 16, 2001, the United States Department of
20 Justice. DOJ, filed suit against the Magnesium Corporation of
21 America, MagCorp, charging that the company illegally handled
22 hazardous waste at its production facility in Rowley, Utah.
23 The suit alleges that MagCorp, now known as U.S. Magnesium,
24 USM, is illegally storing, treating, and disposing at least six
25 hazardous wastes on site in several unlined ditches, a 400-acre

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Summation - Mr. Beus

1 surface impoundment, and a landfill.

2 The six complaint wastes are: 1, anode dust from the
3 electrolytic process; 2, waste water from the chlorine plant
4 water wash column; 3, waste water from the chlorine reduction
5 burner; 4, seal leg waste waters associated with the chlorine
6 reduction burner; 5, waste water from the high-energy scrubber;
7 and, 6, solids from the production of the iron chloride
8 solutions. The complaint wastes exhibit the hazardous waste
9 characteristics of toxicity and/or corrosivity.

10 809. Solid anode dust from both the north and south
11 grizzly boxes exhibit the hazardous waste characteristic of
12 toxicity due to chromium.

13 Anode dust from the north grizzly box contains total
14 PCB greater than 50 million grams per kilogram, parts per
15 million, the threshold concentration for regulation under the
16 Toxic Substances Control Act. It goes on and then says: The
17 anode dust was not sent to a permitted PCB facility.

18 808. The solids that settled in the electrolytic
19 Ducon scrubber sump contain PCBs greater than 50 milligrams per
20 kilogram. Then it lists the five streams. You can see that.

21 Probability, expense, they have done this for decades.

22 This is really bad stuff. Put up 845 for me, would
23 you, please.

24 Effects of dioxins. Toxicity: According to 3, and
25 that's a footnote for the source of authority, dioxin is the

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Summation - Mr. Beus

1 most toxic family of chemicals ever studied. Dioxin has been
2 shown in laboratory tests to be carcinogenic to mammals.

3 365. This is John Works at the EPA. Are you familiar
4 with any concerns EPA may have regarding impacts to wildlife?
5 Yes. What are the concerns? The EPA is concerned that
6 waterfowl or birds are being impacted by the contaminants.

7 366. When you say impacted, what do you mean? That
8 they are dying as a result of landing in the ponds or being
9 contaminated with the constituents that are found in and around
10 the facility.

11 367. And which contaminants? Hexachlorobenzene,
12 dioxin furans, PCBs. Chlorinated hydrocarbons, yes. Anything
13 in addition? Acids in the ponds, low pH in the ponds.

14 369. This is John Works, EPA. Do you have any other
15 evidence that they have been contaminated or impacted? None
16 other than the observations of the one bird that we saw and a
17 statement by Mr. Tripp. What was that statement? Something to
18 the effect that the birds, when they land on the pond, that
19 there is no need to try to retrieve them because they are gone
20 within about 15 minutes anyway.

21 You'll recall the testimony that they were proactive.
22 Remember that? Proactive? They haven't characterized, they
23 haven't permitted, they haven't cleaned up. The cost is
24 material. I won't take you through all the numbers from
25 Mr. Allen. You've got those on a slide.

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Summation - Mr. Beus

1 Let me just show you one more thing that ought to go
2 into the mix of how you deal with as a likelihood -- is there a
3 likelihood there is going to be a problem?

4 Put up 546, will you. This is Exhibit 2146.

5 This is a compliance evaluation and inspection report,
6 January of '01. The agency determined that the sampling
7 inspection was to be conducted as an unannounced inspection and
8 that because of the past sampling history with MagCorp, an
9 administrative warrant should be obtained to guarantee quick
10 and unobstructed access. I secured the assistance of two U.S.
11 Marshals from Salt Lake City to accompany the sampling team and
12 assist in the service of the warrant.

13 371, Mr. Works on the penalties. Do you recall what
14 the range of civil penalty that is currently being considered?
15 Yes. And that range is between, on the low end, 18 to 28
16 million, and a statutory maximum -- max of upwards around 750
17 to 900 million.

18 968. Mr. Legge's affidavit, when they couldn't get
19 financing in the bankruptcy court, when they couldn't get a
20 buyer in the bankruptcy court: Quote, we always knew the
21 environmental issues would create an obstacle to completing a
22 sale or plan of reorganization.

23 Who helped Mr. Rennert in all of this? He had a group
24 of people that he paid highly. Those are the people who we are
25 suing for aiding and abetting, giving assistance to, and

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Summation - Mr. Beus

1 knowing about a violation of fiduciary duties and aiding and
2 abetting an improper fraudulent conveyance.

3 When you get in deliberations, Exhibit 2090 -- can you
4 put that up for me -- and Exhibit 2792 are two documents that I
5 would hope you would look at. That will tell you, these two
6 documents will tell you how you find the numbers that we want
7 you to put in that jury verdict form. There again, 2090 and
8 Exhibit 2792, beginning at pages 19 through 22.

9 I have tried very hard to not give you some kind of an
10 emotional presentation. I have shown you almost 200 slides of
11 evidence. Mr. Park asked you to look at the evidence. That's
12 exactly what I ask you to do. Tell Mr. Rennert to put the \$118
13 million back. And in light of his always wanting to kick it
14 down the road, and in light of how difficult they have been
15 with the United States Government, how callous they have
16 been --

17 MR. HAVELES: Objection.

18 THE COURT: Sustained. The jury will disregard Mr.
19 Beus' last comment.

20 MR. BEUS: When you think about the background and the
21 history from U.S. Marshals to lack of characterization, from
22 illegal conduct, there will be a verdict form for punitive
23 damages.

24 MR. HAVELES: Objection with respect to the reference
25 to marshals.

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Summation - Mr. Beus

1 THE COURT: Overruled.

2 MR. BEUS: When you get to that verdict form for
3 punitive damages, we want you to have a relationship between
4 the \$118 million and the amount you put in there. We want you
5 to put in there \$236 million, twice what he took. I don't know
6 if that will solve the problem and you probably don't either
7 with Mr. Rennert, but that's what we would like you to do.

8 MR. PARK: Objection.

9 THE COURT: Sustained.

10 MR. BEUS: Mr. Buchwald got \$220,000 when he took over
11 this estate, appointed by a bankruptcy trustee. Give him that
12 money back from Mr. Rennert so he can go partially take care of
13 the creditors.

14 Thank you very much for your attention. I really
15 appreciate it and especially in an afternoon session. Thank
16 you.

17 THE COURT: Thank you, Mr. Beus.

18 Members of the jury, that concludes the summation
19 portion of the trial and brings us close to the end. What's
20 left is for me to provide you the instructions of law and give
21 you that tomorrow morning, along with the verdict form for your
22 deliberations. It will take me about an hour to instruct you
23 and we will begin that at 9:30 sharp so that you've got time,
24 want to get started at 9:30. We will have breakfast waiting
25 for you starting at 9. We will start at 9:30 and then we will

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1 turn it over to you for your deliberations.

2 Please bear in mind that all my instructions continue
3 to apply. Though the evidence is closed, you have heard the
4 summation arguments of counsel. You'll hear from me and that's
5 important. And then you'll be able to discuss the case freely
6 amongst yourselves and come to your conclusions.

7 Thank you so much. See you tomorrow morning.

8 (Jury not present)

9 THE COURT: Anything to take up?

10 MR. BEUS: No, your Honor.

11 MR. HAVELES: Your Honor, in light of the inflammatory
12 comments that Mr. Beus made to the jury regarding punitive
13 damages, I would ask you to reconsider whether you will reserve
14 on whether that instruction should be given to the jury.

15 THE COURT: I have reserved and I will continue to
16 reserve.

17 Because we are going to print the charge and verdict
18 form tonight, Mr. Beus, I don't know if you want it or not, but
19 we had discussed something related to missing witness. If you
20 want it, I need to hear it now.

21 MR. BEUS: I think we will just pass.

22 THE COURT: So the charge is closed. We are going to
23 print that, come in, I will read the charge. After I read the
24 charge I'll pull you to the side to make sure that there were
25 no objections or mistakes in my reading of the charge, and then

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1 I'll send them in for their deliberations. I will have lunch
2 provided for them tomorrow so they can just continue with their
3 deliberations throughout the day.

4 Let's say 9:15. Thank you.

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(Adjourned to Wednesday, February 25, 2015, at 9:15
a.m.)

PLAINTIFF EXHIBITS

Exhibit No.	Received
27922692

DEFENDANT EXHIBITS

Exhibit No.	Received
81292692